

No. 90-970

In the
Supreme Court of the United States

OCTOBER TERM, 1990

LECHMERE, INC.,
PETITIONER,

v.

NATIONAL LABOR RELATIONS BOARD,
RESPONDENT.

ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

JOINT APPENDIX

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NATIONAL LABOR RELATIONS BOARD

IN THE MATTER OF: LECHMERE, INC.

BOARD CASE NO. 39-CA-3571

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

<i>Date</i>	<i>Documents</i>
7.21.87	Charge
11.18.87	Complaint and Notice of Hearing
11.30.87	Petitioner's Answer
5.16.88	Hearing - opened
5.17.88	closed
9.30.87	Judge's Decision
10.28.88	Respondent's Exceptions
10.28.88	Respondent's Request for Oral Argument (denied see DO, fn. 1, pg. 1)
12.2.88	Charging Party's Opposition to Respondent's Exceptions
12.2.88	General Counsel's Cross-Exceptions
12.2.88	General Counsel's Reply Brief (Answering Brief)
6.15.89	Decision and Order

GENERAL DOCKET

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

Case No. 891683

LECHMERE, INC.
PETITIONER,

v.

NATIONAL LABOR RELATIONS BOARD,
RESPONDENT.

ON APPEAL FROM NATIONAL LABOR RELATIONS BOARD

NO. BELOW: 39-CA-3571, 295 NLRB No. 15

JUDGE BELOW:

DATE OF ORDER: JUNE 25, 1989

NOTICE OF APPEAL FILED:

PETITION FOR REVIEW: JULY 13, 1989

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1989

FILINGS-PROCEEDINGS

July 13 Petition for Review received and filed. Case docketed and notices mailed. (cm)

July 19 Appearance of Robert P. Joy, Esq., for appellant, received and filed. (cm)

FILINGS-PROCEEDINGS

1989

July 20 Appearance of Aileen A. Armstrong, Esq., for the Respondent, National Labor Relations Board, received and filed. (lp)

July 20 Notice Service Acknowledgement, received and filed. (lp)

Aug 23 Cross-Application for enforcement of an order of the National Labor Relations Board, received and filed. (cd)

Aug 23 Certified list of the National Labor Relations Board consisting of three volumes (I, II, & III) received and filed. (cd)

Aug. 28 Appearance of Howard E. Perlstein, Esq. for the respondent, received and filed. (eml)

Aug. 31 Motion filed. Order: (Torruella, J.) It is ordered that the time for filing statement of issues and designation of the contents to the brief be, and the same hereby is enlarged to and including September 8, 1989. It is further ordered that the time for filing brief for appellant and appendix to the brief be, and the same hereby is enlarged to and including October 6, 1989. Notices mailed. (eml)

Sept. 8 Petitioner's Statement of Issue and Designation of Contents of Appendix, received and filed. (cm)
Petitioner's Answer to Cross Application for Enforcement of an Order of The National Labor Relations Board, received and filed. (cm)

Sept. 28 Motion filed. ORDER (Bownes, J.) enlarging time for filing brief for appellant and appendix to brief to and including October 13, 1989. Notices mailed. (lp)

Oct. 4 Appearance of Richard A. Cohen, Esq., for appellee, received and filed. (efp)

Oct. 13 Brief for the petitioner, Lechmere, Inc., received and filed. Notices mailed (bf)

1989

FILINGS-PROCEEDINGS

- Nov. 8 Motion filed. ORDER: (Selya, J) enlarging the time for appellee to file its brief to and including November 27, 1989. This case will remain on the January, 1990 session. Notices mailed. (ji)
- Nov. 27, Motion for leave to intervene, received and filed. (Eml)
- Nov. 28 Brief for the National Labor Relations Board received and filed. (bf)
- Dec. 7 Opposition to motion to intervene received and filed. (lb)
- Dec. 14 ORDER: (Torruella, J.) Denying the motion for leave to intervene, as stated in said order. Notices mailed. (ac)
- Dec. 21 Assigned for hearing at the January 1990 session. (jms)

1990

- Jan. 10 Heard before JJ. Torruella, Selya and Bownes. (jms)
- Sept. 17 DECREE: The petition for review is denied, and the order of the National Labor Relations Board is affirmed and enforced. Opinion of the Court by Selya, J. Dissenting opinion by Torruella, J. Notices mailed. (lp)
- Sept. 25 Itemized and verified bill of costs, received and filed. Notices mailed. (ji)
- Sept. 28 Petitioner's petition for rehearing and suggestion for rehearing en banc received and filed. (lb)
- Oct. 25 Order: (Breyer, Ch. J. Campbell, Bownes, Torruella, Selya and Cyr, J.J.) denying the petition for rehearing and suggestion for rehearing en banc. Notices mailed. (rm)
- Nov. 2 Taxation of costs filed. Mandate issued, copy filed original papers returned to NLRB Notices mailed. (eml)

1990

FILINGS-PROCEEDINGS

- Dec. 27 Notice of filing Petition for Certiorari to the Supreme Court (December 17, 1990) received and filed. (rm)

1991

- March 21 Order from the Supreme Court (March 18, 1991, 90-970) granting the petition for writ of certiorari received and filed. (lb)

[1]

BEFORE THE
NATIONAL LABOR RELATIONS BOARD
Sub Region 39

Case No. 39-CA-3571

In the Matter of:
LECHMERE, INC.,
Respondent,
and

LOCAL 919, UNITED FOOD AND COMMERCIAL
WORKERS, AFL-CIO,
Petitioner.

Hearing Room
One Commercial Plaza
Hartford, Connecticut

Monday
May 16, 1988

The above-entitled matter came on for hearing, pursuant to
Notice, at 1:15 p.m.

BEFORE:

JOEL BIBLOWITZ, Administrative Law Judge

APPEARANCES:

For General Counsel: THOMAS MEIKLEJOHN, ESQ., Counsel
for General Counsel, National Labor Relations Board, One
Commercial Plaza, Hartford, CT 06103

For Respondent: ROBERT P. JOY, ESQ., Morgan, Brown &
Joy, One Boston Place, Boston, MA 02109

For Charging Party: J. WILLIAM GAGNE, JR. and BARBARA
COLLINS, ATTYS., 207 Washington Street, Hartford, CT 06103

* * *

[5] MR. MEIKLEJOHN: I'd like to make a brief opening
statement. As you noted, the formal papers are pretty
straightforward and self-explanatory.

There are essentially three issues in this case. All section
8(a)(1) allegations arising out of an organizing campaign by
UFCW Local 919.

The organizing campaign involved a retail store operating
by respondent in the Town of Newington, Connecticut.

We have an extensive detailed description of the property on
which that facility is located, contained in Joint Exhibit 1.

The first issue in this case concerns the charging party's right
of access to the property on which the store is located. It's a
case arises under, and has to be decided [6] under the stan-
dards enunciated by the Board in *Fairmont Hotel* and suc-
ceeding cases.

In a nutshell, organizers for Local 919 attempted to
distribute handbills to employees of respondent at the New-
ington store in June and July of 1987, by placing the handbills
on employees' cars in respondent's parking lot.

General counsel contends that the Section 7 rights to
distribute there handbills outweigh[s]* (sic) respondent's
private property rights.

General counsel takes the position that the private property
rights are weak in this case, because the parking lot in question
is open to the public. It's shared by respondent with other
stores. There are no efforts taken by respondent to restrict or
control access to the parking lot. There are no signs or other in-
dications in the parking lot that its use is restricted in any way.

On the other hand, the union's Section 7 rights are par-
ticularly strong. They involve organizing rights, which the
Supreme Court in the *Sears* case, 436 US 180, page 206, Note
42, stated "that organizing rights are at the core of the purpose
for which the National Labor Relations Act was enacted."

And in a recent Board decision called *Emery Realty* 286
NLRB, number 32, the Board found that Section 7 rights
outweigh private property rights, relying heavily on the fact

*Bracketed Inserts indicate corrections contained in Errata List for
Transcripts of Hearing.

[7] that the rights being exercised in that case were organizational rights.

Obviously, this is an issue which will be ultimately briefed. And when I get to my brief I'll have to analyze these cases in considerably more detail.

In any event, we'll show that the union A) engaged in the distribution of the handbills in a peaceful fashion; that they attempted to focus their distribution of handbills on employees, placing them on cars driven by people they believed to be employees of the store. And, therefore, these are the reasons that the Section 7 rights outweigh the private property rights. And we then would, therefore, contend that ejecting the union organizers from its parking lot, respondent violated Section 8 of the Act.

Alternatively, if the rights of access, the Section 7 rights, are found to be relatively equal to the private property rights of the respondent, then we would contend that there were no adequate alternative means of communicating available to the union, and that as a secondary position, a fallback position, that even if the rights were relatively equal, that the charging party was still entitled to access to the premises.

I emphasize, and I think I've made it clear that initially we're contending that the Section 7 rights outweigh the private property rights, regardless of alternative means [8] of communicating with employees.

* * *

JUDGE BIBLOWITZ: Mr. Joy?

MR. JOY: I would, Your Honor.

[9] I believe that the evidence will show that the private property rights here in question are stronger than the Section 7 rights asserted. And that, in any event, the union had effective reasonable alternative means of communicating its message to the employees.

I would assert that the analysis advanced by Chairman Stevens [Stephens], and that's stated by the Supreme Court in

the case of *NLRB v. Babcock and Wilcox* is the appropriate level of analysis here. That is, that one should first look at whether there was a reasonable alternative means of communication. And only after deciding that there was not should the judge engage in balancing of the private property rights with the Section 7 rights.

But we would assert that under whatever level of analysis is employed, whether it's the *Fairmont Hotel's* level of analysis, mode of analysis, or the *NLRB v. Babcock and Wilcox* level of analysis, the respondent should prevail. And for these reasons: First of all, the strength of the property right should be looked at with respect to the use and restrictions placed upon the use of that property.

The evidence here today and tomorrow, if we go beyond today, will show that this respondent has gone to great lengths to restrict the use of this property, this private property, to patrons of its store, and only to patrons of its store. And it has uniformly enforced that [10] rule. The evidence will be presented this afternoon and tomorrow that will show that that is true without exception, as to non-employees of this respondent.

Secondly, the nature of the property would argue for the strength of the private property right here, as opposed to the Section 7 right. This is a stand alone store in a plaza. This is not an arcade or a mall, such as was present in the Emery Realty case cited by counsel for the general counsel earlier today.

That case, and I will go into a little further explanation, will be easily distinguished as the evidence unfolds in this case. It was a 47 story office tower, the Carew Town [Tower] in Cincinnati, I believe, or Indianapolis. And it had an arcade running from one public street to another. It was open 24 hours a day, and the public used it as a cut-through.

You will find, in looking at Joint Exhibit 2, and you will see that Lechmere is a stand along (sic) store, unconnected to the

other stores in the plaza. It is separated by some 100 to 114 feet. There is no bridge or walkway or anything else that connects it. It stand (sic) alone.

It does have on its doors decals which say, and I will quote from the stipulation of facts, that to the public: "No soliciting, canvassing, distribution of literature or trespassing by non-employees in or on the premises, in the [11] store or on the premises."

So to say that the evidence will show by stipulation now entered into the evidence, proves that there is posting of this property. I admit that there is no sign right out at the front entrance that speaks of no solicitation.

Now the no solicitation policy of the store was promulgated in 1982, and we have so stipulated. That policy, which is now marked as Joint Exhibit 3, states in relevant part that non-associates, and by the way I should state, and the evidence will show, that this company refers to employees as associates. That is interchangeable with the term employee.

That policy states, in relevant part, "non-associates are prohibited from soliciting and distributing literature at all times anywhere on company property, including parking lots. Non-associates have no rights of access to non-working areas, only to the public in sellings areas of the store, in connection with its public use."

That policy, as I said, preceded the advent of this organizational activity by some five years.

Now the parking lot, as shown on the map, has two areas. And the public, as I said, is invited for the purpose of shopping. This is the Berlin Turnpike. The speed limit is 50 miles an hour, as the stipulation exists. The public is not going to be driving 50 miles down the road [12] just to pull in and walk through this shopping plaza, like they might do in a shopping mall in a suburban area on a Friday night, which would be the locus of social activity. This is not that kind of a situation. And this entrance indicates that. As we have stipulated to,

people are driving by at 50 miles an hour. Therefore, the inference to be drawn, we would argue, is that people are coming to Lechmere to shop, and to these other stores to shop.

Let's analyze the Section 7 right for a moment. It is true that at the advent of this activity the union was focused on the employees, and therefore, was engaged in organizational activity. *Fairmont Hotels*, however, says the manner with which that right was exercised bears in the balancing analysis here. Let's look at the manner in which that right was exercised. The evidence will show that the first day that representatives of the United Food and Commercial Workers showed up on Lechmere's property, they went inside the store and began to leaflet inside the store, and were advised that there was a no solicitation, no distribution policy, and the evidence will show that they, nevertheless, went into the warehouse area, which clearly has a sign "No associates". And testimony will show that they went into that area and came out, where nobody argues they had a right to be.

By the way, nobody is arguing that they had a right [13] to be in the store either. And they were asked to leave. And they did leave. But shortly thereafter they were back in again. And two days later they were back in again, and again.

And the evidence will show that the manner with which this union exercised its Section 7 right, was totally in disregard of the no solicitation policy, which they were advised of from the first time that they came into that premise.

The second point I want to make is that with respect to the Section 7 right, the union changed its audience, its intended audience, after August 3rd of 1987. It began to focus on the public. It changed from its intended audience of the employees to the public at large. And what it did was it began to have newspaper advertisements published focusing at the public, telling them that Lechmere was a non-union store, etc. And then began picketing on August 7th.

And the evidence will show, the stipulation is actually now in, that picketing began on August 7, 1987 on that grass strip that is the public area up by the Berlin Turnpike, and continued without interruption, without any request by any representatives of Lechmere to cease that activity and vacate those premises, from August 7th through March of 1988. That property comes within four feet of the Lechmere parking [14] lot.

The evidence will show that the employees of Lechmere are asked to park in this section, which borders that grass strip. That picketing took place without interruption for eight months four feet away from the employee section of the parking lot.

The evidence will show that the employees arrived approximately a half hour before the store opens in numbers. It's pretty easy to identify who they are. And once you see where they all park the first day you can easily determine who are employees. And the evidence will show that.

And not only will the evidence show that, but the evidence will show that indeed this union did take down license plate numbers, and go to the Connecticut Division of Motor Vehicles, and get names and addresses. And the evidence will show, we will provide testimony, that all one has to do in the State of Connecticut is to take a license number up the street to Wethersfield, ten minutes away, walk into the Division of Motor Vehicles, hand the person behind the counter a license plate number, as many as you want, and get back, once they punch it into the computer, and you will get back a whole list of names and addresses. And this union did that.

And, therefore, I would argue that they had reasonable [15] alternative means of communication, and did use them.

The evidence will show that they mailed material to the homes of employees. They made telephone calls to the homes of employees. They made personal visits to the homes of employees, all presumably, although not exclusively, on the

basis of information obtained from taking down license plate numbers.

* * *

[16] Now, by the way, the evidence will also show that the 90 percent of the employees employed in the June, July and August time frame of Lechmere at its Newington store, live in the towns of Hartford, Newington, and New Britain. The newspapers advertisements which have been submitted, or have been about to be submitted as part of the joint stipulation, which I have original copies of it, and which I'll show your Honor a sample of, were published either full page or quarter page in the Hartford Courant, which is one of the largest, if not the largest, newspaper in this area. And we will present evidence that its circulation circumferenced places: Hartford, Newington, New Britain almost in the heart of its circulation area.

The New Britain Herald was also a newspaper used for advertisement. And again a large section of a number of the employees, as the evidence will show, reside in New Britain.

So that fact as well will bear on the fact of reasonable alternative means of communication.

* * *

[17] JUDGE BIBLOWITZ: Mr. Meiklejohn, do you wish to put [18] a witness on?

MR. MEIKLEJOHN: Yes. Before I do, I've no intention of engaging in a lengthy argument with what counsel stated. I just would like to note for the record that it is general counsel's position that what went on inside the store is totally irrelevant to these proceedings. And I'll be raising that objection at an appropriate time.

And, likewise, the fact that they changed the purpose after they were barred from the premises is irrelevant to a determination of whether they're entitled to go onto the parking lot for the purposes of reaching employees, before they engaged in

other activities at a later date, directed at another audience.

JUDGE BIBLOWITZ: We'll get to that, if we have to. Witness?

MR. MEIKLEJOHN: Yes. General counsel calls Roger Samuelson.

Whereupon, ROGER SAMUELSON
having been first duly sworn, was called as a witness herein,
and was examined and testified as follows:

JUDGE BIBLOWITZ: Please be seated. Your first name is Roger and S-A-M-U-E-L-S-O-N?

THE WITNESS: S-o-n.

JUDGE BIBLOWITZ: Mr. Samuleson, you'll first be [19] questioned by Mr. Meiklejohn. He's the attorney for the Labor Board, and maybe Mr. Gagne, and then by Mr. Joy possibly.

Okay, Mr. Meiklejohn.

Direct Examination

By Mr. Meiklejohn:

. . .

Q. . . . Okay. Mr. Samuelson, by whom are you employed?

A. Lechmere.

Q. And what is your position with Lechmere?

A. General manager.

Q. And are you general manager of any specific facility?

A. The Newington, Connecticut facility. Yes.

Q. And, as general manager, do you have the authority to hire and fire employees?

A. Yes, I do.

Q. Request permission to question the letter. (sic) Have

you been the store manager since that store opened? Excuse me, general manager since the store opened?

A. That is correct.

[20] Q. And, as general manager, are you essentially the highest official of Lechmere at the store, with full time responsibility for that store?

A. Yes, that's right.

Q. You would report to somebody in the heirarchy of the company, outside the store? Is that right?

A. Yes, that's correct.

Q. Now let me show you what has previously been received in evidence as Joint Exhibit 2. I'd like to ask you, is there a — well, first of all, the area in front of what is marked as the front entrance, that is all an open parking lot? Is that correct?

A. That's correct. That's an open parking lot.

Q. Is there any particular area of that parking lot where employees are directed or instructed to park?

A. Yes, they're instructed to park in the area. There's a dog leg there that says grass, and the other area that says grass. So in that general area is where the employees are asked to park.

Q. Let me ask if you could mark the word "employee" in the vicinity where employees are requested to park, on the map?

A. Would you like a circle around it?

Q. That sounds like a good idea.

A. I'd say in that generally in that area.

[21] Q. Before we turn away from this map completely, directly at the opposite end of the parking lot is a block marked "plaza", and that's a facility that's designed for 13 stores? Is that correct?

A. That is correct.

Q. I think last summer there were only four stores in there. We stipulated that. As time as gone on, has other of those stores found tenants?

A. Yes. Back that summer the entire building was under construction. Other residents were in there at that point, with the rest still being under construction. Currently today there are more open.

Q. I am sure that as time passes that the owner of the building hopes that more of those will be filled.

A. I'm sure his desires are all open.

MR. JOY: Objection.

JUDGE BIBLOWITZ: Overruled.

BY MR. MEIKLEJOHN:

Q. In fact there is a sign in front of that property, advertising for tenants of the other store?

A. Yes.

Q. Now is there any — are there any restrictions which would prevent customers or employees of the satellite stores, or the stores in the plaza, from parking in the area which you've marked "employee"?

[22] A. No, there would not be, other than it's a great distance to walk. It's just convenient to park there.

Q. But if perchance business was very good, and the parking lot immediately adjacent to the plaza was filled, cars could park as far away as the area marked "employees"? Is that correct?

A. I would imagine that's possible. Yes.

Q. And if somebody came to the store on foot from a neighboring store — there's a Grossman's, which is a home improvement center — well, let's see, this hasn't been marked on this either. The north of the property is roughly the area marked Pascone Street? Is that correct?

A. Yes.

Q. So to the south of the store, immediately adjacent to Lechmere's, or immediately behind Lechmere's, is a Grossman's Home Improvement Center? Is that correct?

A. That's correct.

• • •

[23] By MR. MEIKLEJOHN:

• • •

Q. This grass strip, it continues onto the border of the Grossman's store as well? Is that correct?

A. Yes.

Q. So somebody could walk up — there's no sidewalk up there, but somebody could walk up on the grass strip to get from one property to the next?

A. There is no sidewalk, but Grossman's does have a divider fence between our facility and their facility.

Q. So you couldn't cut directly from one property to the other? If you wanted to walk from Grossman's — it's called Lechmere Plaza? Is that the name?

A. Yes.

Q. If you wanted to walk from Grossman's to Lechmere Plaza, you'd have to come around and walk up the grassy [24] strip?

A. You would have to walk up a steep incline to the curb area, where you could walk along the curb line or grassy area to our plaza.

Q. And there would be no barriers or signs or anything restricting someone from walking through the employee parking lot to the plaza, would there?

A. No.

Q. Just to make it clear, the fence that you referred to doesn't extend across the grassy strip, does it?

A. No, it does not go through the curb line.

Q. Okay. What type of products does Lechmere sell?

A. Basically Lechmere is a retailer selling hard lines, which for the layman, would be television sets, audio equipment, housewares, sporting goods, watches and so forth. Clothing would be soft lines, and we don't carry clothing.

Q. During the summer months, can you estimate how many customers you would serve per day?

A. Not off the top of my head.

• • •

[25] Q. Can you tell us approximately, or is that too difficult?

A. Approximately 75 a day.

Q. That would be the number of customers you actually sell goods to?

A. During the summer months, as you indicated. That would change in different seasons. Christmas season gets a lot of business.

Q. But the 75 you're estimating as an average figure, would just be people you actually sell something to? Correct?

A. Yes.

Q. Well, not everyone who comes into the store buys a product from your store? Is that correct?

A. That's true.

. . .

[28] Q. Well, how many people would you say you have in the store on a good day in the summer? Say a sunny Saturday? A sunner [sunny] Saturday would be a good shopping day?

A. If it was a sunny hot Saturday where people were buying fans and air conditioners it might go upwards to 500 people.

Q. Is it true that on June 18, 1987 representatives of United Food and Commercial Workers, Local 919 placed handbills on the windshields of cars in the parking lot at the Lechmere facility?

A. Yes, June 18th they were definitely in the parking lot putting literature on, as well as inside the store.

Q. I'm just asking you about what took place in the parking lot.

A. Yes, in the parking lot, they were outside placing [29] handbills on the windshields of cars.

Q. Were those handbills placed largely in the area that you indicated as the employee parking lot that you circled?

A. Yes.

Q. Did you instruct security personnel from the store to direct those union representatives to leave the property, and to escort those union representatives off of the property?

A. No, that was basically my job. When they had arrived, or one of my senior staff, we would go out there and give the direction that we had a no solicitation policy, and enforce that. We would ask our loss prevention people to collect the data from the various windshields.

Q. First of all, you used the term loss prevention people. Those are essentially security personnel?

A. That term. Yes.

Q. And you said you instructed them to remove the data. What that means is you instructed them to remove the leaflets from the windshields?

A. That's correct.

Q. You personally with someone else, or by yourself, went out and instructed the union representatives to leave the property?

A. Which occasion now?

Q. We'll start with June 18th. How many occasions did [30] they place leaflets on windshields on June 18th?

A. Three times.

Q. Did you instruct them to leave the property all three times?

A. No, I did not. My assistant store manager, Steve Mittler, had done the instruction at the 10:00 A.M. event.

Q. That was the first one?

A. Yes.

Q. And you personally did it the second two times?

A. The second time I did, and the third time my assistant manager again, Steve Mittler, had done, I believe it was the five o'clock removal.

Q. The property you instructed them to leave was the entire parking lot? Is that correct?

A. That's right. It was on Lechmere property.

JUDGE BIBLOWITZ: These were all on June 18th, these three incidents.

THE WITNESS: Yes.

BY MR. MEIKLEJOHN:

Q. When you refer to the Lechmere property you are also including the portions of the parking lot which you and Newington Commercial Associates share an ownership interest in? Correct?

A. Yes. Although on that particular occasion they were distinctly on the Lechmere part of that property.

[31] Q. Well, when you say they were distinctly on it, if I was standing in the parking lot there is no delineation of which portion of the parking lot belongs to Lechmere, and which part is shared with Newington?

A. No, that is true. There is no painted line to show where the halves are.

Q. Now you say you instructed the security personnel to remove the leaflets, the documents, from the windshields. Did they bring you one or more copies of the leaflets in question?

A. Yes, they did.

. . .

Q. I show you a document that's been marked for identification as General Counsel Exhibit 2, and ask you whether this is the leaflet which was placed on employees' cars on June 18th?

A. There is another leaflet which rings a bell, which was totally black and white, with a self-stamped envelope that I am also familiar with.

Q. Let me ask you this. This was a leaflet which was [32] placed on employee cars on one date?

A. This is one. Whether the date was the 18th or 20th, I am not sure of at this moment. But this is one of the leaflets that were distributed. Yes.

Q. There were also leaflets placed on employee cars on June 22nd? The 20th and 22nd? Correct?

A. That's right.

Q. I'm not going to ask you about the 20th, but on the 22nd did you also instruct your security personnel to remove the leaflets from the cars?

A. Yes.

Q. And did you also instruct individuals distributing leaflets to leave the entire Lechmere property?

A. Yes. Going over those three days, yes, we had asked — quoted our no solicitation policy, and asked them to please leave the Lechmere property.

Q. And on all those occasions they left when instructed to do so? Is that correct?

A. Not immediately, but yes, they eventually left.

Q. The document you have in front of you, General Counsel's Exhibit 2, is that one of the leaflets that was placed on employee on one of those days?

A. Yes.

. . .

[33] Q. I'm showing you the document, which has been marked for identification as General Counsel's Exhibit 3, GC-3, and ask you if this is also a leaflet which was placed on employee cars on one of those dates?

A. This is a partial part of one of those leaflets that was put on the cars. Yes.

Q. There was more to the document to that?

. . .

[34] A. Yes. As I stated earlier, there was a stamped self addressed enveloped addressed to the union, that was attached and stapled onto all these. So this is a partial.

. . .

[35] Q. The envelope was postage paid by recipient, or required no postage?

A. That's correct.

Q. Do you have anyone who is assigned to patrol the parking lot, and assure that it is not used by anyone other than

employees and customers of Lechmere or the satellite stores?

A. At which point in time? Back when the activity was on?

Q. Prior to June 18th did you have anyone performing that duty?

A. Not 100 percent of the time. Loss prevention is part of their job, would be to also review what might be going on in the parking lot in general. There is always the concern for associate's cars. And while they had no easy access, they would occasionally walk out there just to see if there were any activities.

Q. They are looking to see whether somebody is vandalizing or breaking into a car in the parking lot? Is that the idea?

A. That's correct.

Q. They're not looking to see if there's someone there who is not planning to shop at one of the stores?

A. No. How would you distinguish that?

[36] Q. I don't think you could.

* * *

JUDGE BIBLOWITZ: Mr. Meiklejohn?

[37] MR. MEIKLEJOHN: Yes. General Counsel calls Lisa Meucci.

* * *

Direct Examination

BY MR. MEIKLEJOHN:

Q. Miss Meucci, by whom are you employed?

A. By United Food and Commerical Workers Local 919 in Hartford, Connecticut.

Q. What is your position with Local 919?

A. Business representative/organizer.

Q. How long have you held that position?

A. Since June 1, 1987.

Q. You were here when Mr. Samuelson described the placement of leaflets on cars in the parking lot. Were you [38] involved in the placement of those leaflets in any way?

A. Yes, I was.

Q. What was your involvement in that?

A. The morning of June 18th I placed them on the windshields of the store, of the cars outside the store in the employee parking area.

Q. Were you aiming these leaflets at any particular audience?

A. The employees of Lechmere.

Q. What steps did you take to insure or to attempt to insure that the leaflets reached that particular audience?

A. Arriving at the store between 9:15 and 9:30, making sure that the people who parked their cars were employees. The store opened up at ten o'clock, so most people that arrived at the store between 9:30 and 10:00 were employees.

Q. After you determined who were employees, or who came to the store before ten o'clock, what did you do?

A. We would put handbills on the windshield of their car.

Q. Drawing your attention to June 20, 1987, which was a Saturday, do you remember what you did that day, that morning?

A. Yes, I met the representatives from Local 919, three other representatives and myself met at Bradlee's parking lot across the street from Lechmere in Newington, on the [39] Berlin Turnpike.

Q. Approximately what time was that?

A. Approximately 9:30 Saturday morning.

Q. And after you met them there what did you do?

A. We went in two separate cars to Grossman's parking lot in Newington.

Q. Where is that located?

A. To the south of Lechmere. As you pass Lechmere it's on the right hand side, south of the store on the Berlin Turnpike also.

We walked up the grassy knoll that Mr. Samuelson described earlier, up the side of the road on the curb, up to

Lechmere, to the first entrance, the one closest to the store. And we stood on either side of the entrance and attempted to handbill the employees coming into work in the morning at 9:30, 9:25, 9:40,

Q. Then what happened?

A. Mr. Samuelson, I assume, or his assistant, assistant manager, and three security guards, came out and asked us to leave the property.

Q. Let me show you Joint Exhibit 2.

JUDGE BIBLOWITZ: Before you do that, could I get a stipulation, Mr. Joy? Would it be correct to say that the store opens every morning, or at least Monday through Saturday, at 10:00 A.M.?

[40] MR. JOY: At that time.

JUDGE BIBLOWITZ: At that time? Would you stipulate to that?

MR. JOY: Yes, Your Honor.

JUDGE BIBLOWITZ: Mr. Gagne?

MR. GAGNE: Yes, Your Honor.

JUDGE BIBLOWITZ: Okay, stipulation is received. Ten o'clock at that time every morning, Monday through Saturday.

BY MR. MEIKLEJOHN:

Q. I show you what's been received in evidence as Joint Exhibit 2, and ask you if you could indicate on that, first just by pointing, where on the map you were standing with the handbills?

A. Right here.

MR. JOY: May I approach, please?

JUDGE BIBLOWITZ: Yes, sure, please. That's the first entrance, I assume the entrance right before the grassy knoll on the Berlin [] Turnpike?

THE WITNESS: Yes, Your Honor.

JUDGE BIBLOWITZ: Okay.

BY MR. MEIKLEJOHN:

Q. Could you mark a letter "A" in the area where you were standing?

JUDGE BIBLOWITZ: You meaning she and the other [41] individuals?

BY MR. MEIKLEJOHN:

Q. Were the other representatives of Local 919 standing in approximately the same area?

A. Yes. Exactly the same area as myself.

Q. I think I skipped this. Who were the other representatives of Local 919, who were there that morning?

A. John Cassarino, Mark Espinosa and Cliff Gagnon.

Q. Now would you describe what took place while you were standing in that area?

JUDGE BIBLOWITZ: This is on June 20th?

Q. On June 20th.

A. Saturday morning. On June 20th, Saturday morning, myself and three of my co-workers went to that entrance of Lechmere, and stood at the opening and attempted to hand out leaflets to the employees.

Within three to five minutes Roger Samuelson, his assistant manager I assumed, and three security guards came out and asked us to leave the property. At that time we hadn't given out any pamphlets at all. And they asked us to leave their property, and we said we thought we were on public property. We assumed ten feet from the road in would be town property or public property. And they said that that was their property and we'd have to leave or they would call the police.

[42] Two of the security guards had cam corders, and at that time Roger Samuelson started to dictate into the cam corder: "I, on this 20th of June morning, at 9:45, am asking union officials to leave our property. They have refused to leave and I am now calling the police." That was all on tape.

And they continued to tape us, and put us on the cam corder while he and his assistant manager I think went to call the police.

Within ten minutes the police arrived in two separate cars. Officer Gallagher came over and asked us our names and birth dates. And we furnished him with that information, and our addresses. We gave him our local's address.

He started to explain that the speed limit on the highway. It could be dangerous for us to be near the highway, and we [were] by no means on Lechmere property. We were on public property.

Q. Who said that?

A. The police officer, Officer Gallagher, said we were on public property, but we'd have to be careful being so close to the road right on that little ten foot knoll.

So Roger Samuelson and the police officer went and discussed something, and Officer Gallagher came back and said he had to discuss something with his sergeant. And he [43] called in on the police radio.

* * *

[44] Q. What happened after the conversation between Mr. Samuelson and the police officer?

A. Well, the police officer then said to us: "I have to call my sergeant to check on something", so he called his sergeant, and he came back and he said we could stay there, but again we couldn't obstruct the traffic flow coming in and out of the parking lot, or on the highway.

* * *

Q. What happened after the police officer told you you could stay?

A. We ended up leaving because the security guards were out there anyways, and I don't know of too many employees that would stop and pick up a handbill with the manager, assistant manager, and three security guards with a cam corder taking pictures, so we ended up leaving.

Q. Now did you make any other efforts to communicate with employees at the Lechmere store?

A. We tried a newspaper ad, and not getting any response [45] back from those, we were concerned that maybe the high school kids weren't reading the newspaper. So weren't noticing the ads. So we also tried phone calling, by getting the license plate numbers, and then looking them up at the Motor Vehicle Department.

Q. How many employee names were you able to obtain through Motor Vehicle Department?

A. 49, 41 of which we could use, because eight of those were assistant managers, security managers.

Q. What did you do after you obtained the 41 names? What did you do with those 41 names?

* * *

A. Made house calls and some phone calls.

Q. And what results did you obtain from those contacts?

A. Generally the parents would intervene, so we didn't get a chance to talk to the employees or associates of Lechmere.

Q. When you say the parents would intervene, in what fashion?

A. Saying their son or daughter was just a part time high school student, and wasn't really interested in getting involved with the union.

Q. Now you've made a number of references to high school students and high school kids, what high school students are (46) you referring to?

A. Mostly Newington High School. The associates of the Lechmere store, the employees.

* * *

[47] MR. MEIKLEJOHN: No further questions of this witness, Your Honor.

JUDGE BIBLOWITZ: Mr. Joy?

MR. JOY: At this time I'd like to call for the affidavit, if any, of the witness.

* * *

[48] *Cross Examination*

BY MR. JOY:

Q. Ms. Meucci, you provided affidavits to the Regional Director in this case, did you not?

A. Yes.

Q. I would just show you two documents, which I would like to ask you to identify. The first document is in the form of an affidavit, and contains on the top of it "statement affidavit". Is that correct?

A. Yes, it does.

Q. Is that a copy of an affidavit you supplied to the Regional Director?

A. Yes, I did.

Q. I show you a second document, which also is entitled "affidavit". Is that a copy of an affidavit that you supplied to the Regional Director?

A. Yes, I did.

Q. And you signed and swore [swore] to the contents of each of these, did you not?

[49] A. Yes, I did.

Q. Now, focusing your attention on the events — pardon me a moment — of June 20th, to which you have already testified, it was your testimony that security guards came out with cam corders? Correct?

A. Yes.

Q. And it was also your testimony that after the police officers came and told you that you could remain on the public area of the grassy strip, you nevertheless decided to leave? Correct?

A. Yes, after they suggested it might impair the traffic flow. It was almost a suggestion we leave.

Q. Almost a suggestion by whom?

A. By the police officer, by Officer Gallagher.

Q. Well, wasn't it your earlier testimony today that you ended up leaving "because of the security guards with the camcorders"?

A. Yes.

[50] Q. Didn't you testify earlier today that you ended up leaving on the 20th, after the police arrived, because of the security guards with the camcorders?

A. Yes.

Q. And you're changing your testimony now?

A. No, I'm not changing it.

Q. Did you just say a moment ago that you left because of a suggestion by the police that you leave?

MR. MEIKLEJOHN: I will object, Your Honor. The record will show whether or not —

JUDGE BIBLOWITZ: Overruled. He's entitled to cross examine fully. Overruled.

BY MR. JOY:

Q. Well, what was the reason that you left that day, after the police had spoken to you?

A. Partially because they told us it might impair the traffic flow, and that we might want to leave because of the danger of the traffic flow. The speed limit is 50 miles and hour. And he said: "You might want to leave because it might impair the traffic flow. Or you might get hurt, because it is a dangerous area to be walking on that strip."

Q. When you say he, to whom are you referring?

A. Officer Gallagher.

Q. Have you spoken to Officer Gallagher recently?

[51] A. No, I haven't.

Q. The last time you spoke to Officer Gallagher was when?

A. On June 20th.

Q. Now in your affidavit you state that (and this is on page 3) — I'll ask you to read it, I can't quite read the writing.

A. It's not my writing.

Q. Can you decipher it?

A. "Five minutes later."

Q. When she started to read it I located the spot. Would you read it, please?

A. "Five minutes later the police arrived. The police explained to the employer that we were on state property, but he told us we might disrupt (I think it's disrupt) traffic flow and must leave. We left."

Q. And was that the reason that you left?

A. Not entirely.

Q. Why didn't you add the rest of the reasons in your affidavit?

A. At that time, to the best of my recollection, that's when we left, because it might impair the traffic flow and he suggested we leave.

Q. And today you're adding another reason why you might have left that day?

[52] A. No, it might impair the traffic flow.

* * *

Q. And that was the reason you left?

A. Partially.

Q. Well, what other reason did you leave?

A. Because he suggested we might leave.

Q. The policeman?

A. Yes.

Q. And those were the reasons why you left?

A. Mm mm.

Q. Answer yes?

A. Yes.

Q. Now you've testified about events which occurred on the 18th of June, 1987? Correct?

A. Correct.

Q. And you testified that you were in the parking lot of the Lechmere Newington store, handbilling the windshields of cars that day? Correct?

A. Yes.

Q. Weren't you also inside the store itself?

MR. MEIKLEJOHN: Objection. Your Honor, the complaint allegation — let me make general counsel's position clear. Is that the union has the right to handbill in a parking

lot. There is no dispute that they also went inside the store to [53] handbill.

General counsel has determined that restricting them and preventing them from handbilling in the store was not an unfair labor practice, and therefore, what took place, and the restrictions that were placed on their handbilling inside the store is totally irrelevant to this proceeding, and I strongly urge that the facts and the testimony taken in this case focus on what is an issue in this case, rather than going far afield on a number of issues which are not before you.

JUDGE BIBLOWITZ: What's the relevance of what they did in the store? It's not alleged as ULP. Are you alleging that if it weren't for the in-store activities you might have allowed the union to engage in the out of store activities?

MR. JOY: I'm saying, Your Honor, that as required by the teachings of the Fairmont Hotel case, 282 NLRB 27, the quoting page, the bottom of page 9 and the top of page 10, "that the factors that are to be taken into consideration in evaluating the property rights versus the Section 7 rights include, among other things, the manner in which the right is being asserted."

I would argue that if one is asserting a Section 7 right, and has a track record of already having ignored and engaged in unauthorized trespassory activity, that relates [54] to the ["] manner in which that right is being asserted."

Not only that, but because of the pattern, hit and miss, inside the store or outside the store, that evidence bears on the reason why the employer decided to put a camera on the premises as well.

So I think from both of the points of view, from both of those points of view, this evidence is certainly relevant.

JUDGE BIBLOWITZ: I disagree. I think when you talk about the manner it's being asserted, I think the whole issue here is the manner, i.e., the leafletting in front of the store. That's the issue here.

The fact that they may have engaged in what you consider wrong-doing, and what general counsel considers no violation previously, that as being in the store, that is not relevant here. I'm only interested in whether they should be allowed, or should have been allowed, to engage in the activities they engaged in outside the store.

So sustained.

MR. JOY: Your Honor, at this time I'd like to make an offer of proof.

JUDGE BIBLOWITZ: Okay.

MR. JOY: And I would like to do it in question and answer form.

JUDGE BIBLOWITZ: By the way, general counsel has [55] admitted that the union did enter the store, so I do have a little background on that. I really don't see any purpose of engaging in long questions and answers as to what they did in the store at this point.

MR. JOY: I take that Your Honor's direction is that I may not engage in a question and answer offer of proof?

JUDGE BIBLOWITZ: Correct.

MR. JOY: However, I would like to state an offer of proof.

JUDGE BIBLOWITZ: Go ahead.

MR. JOY: In some detailed fashion, so as not to be found conclusiary [conclusory] at a later date, in the event that it's necessary to review this issue. Someone might feel it was conclusiary [conclusory].

If allowed to examine the witness, Your Honor, I believe her testimony would show that on June 18th she, along with several other representatives of the United Food and Commercial Workers Union, entered the Lechmere Newington store at around 10:00 A.M., and started distributing pamphlets and authorization cards to the employees.

Indeed, one even entered into the warehouse area. And if allowed to examine this witness, I believe she would testify that one person did enter the warehouse area, which is clearly posted against anyone but associates being allowed to enter.

[56] They left, but then at two o'clock that day, I believe this witness would testify, they returned inside the store, even now after being advised of the no solicitation policy and came right back inside the store, as well as leafleting out in the parking lot.

And, again, I assert the relevant connections to the issue in this case is that they are manifesting just a complete disregard for the posted policy of the premises, including the store itself.

At two o'clock an individual was confronted by Mr. Samuelson and Mr. Mittler. I believe Ms. Meucci was present in the store at the time. He was one Mr. Fayer [Phaiah]. He was asked to leave six or seven times, and refused to do so. And later that day there was an additional incident involving in the store leafleting.

Then, if asked, if allowed to examine this witness, I believe she would testify that on June 20th she again went into the store, knowing clearly what the instore policy is, and she also leafleted inside the store at that time.

I believe it's additionally relevant for the 20th, Your Honor, because when met by representatives of the store at this grassy area, they were just coming out from the Lechmere store on the Lechmere part of the parking lot. And that has a relevant connection to whether or not these gentlemen were asking them to leave the public property. [57] They were just coming out of the store, and I think that bears on the directive that they will testify to themselves later. But I think if asked, she will have to testify that she was in the store, and I believe her affidavit so states.

* * *

Let me add one other piece to that, Your Honor. Literature was found continuously, as I said in my opening statement, in the rest rooms and on the shelves and so forth. And I would like to be able to ask this witness if she, even after the events of June 18th and June 20th, went inside the store and left literature in the restrooms and in the shelves, and put it in merchandise. I think that bears on the reasonable alternative means of communication issue as well.

JUDGE BIBLOWITZ: You can do so. If there is an objection I'll rule on it. I'm not going to make any determination until you ask a question and then there is an objection.

MR. JOY: Okay.

BY MR. JOY:

Q. Ms. Meucci, did you ever go inside Lechmere's Newton store and leave literature in the restrooms?

A. Yes.

[58] MR. MEIKLEJOHN: Objection.

JUDGE BIBLOWITZ: Sustained.

MR. JOY: Your Honor, I'd like to make again an offer of proof, and again incorporate by reference all of the reasons that I've stated in my just recently made offer of proof. And, in addition, add that here again I believe it's relevant to the question of reasonable alternative means of communication.

And if allowed to examine this witness, she would testify that she'd get inside the store and had access to employees.

BY MR. JOY:

Q. Now focusing again your attention on the 18th of June it's your testimony, is it, that you were asked to leave Lechmere property?

A. Yes.

Q. Can you identify particularly who it was that asked you to leave Lechmere property?

A. No, I don't recall.

Q. It wasn't Mr. Samuelson then?

A. On the 18th? I don't think it was Mr. Samuelson.

Q. Now on the 20th, it's your testimony, is it not, that you met other representatives of Local 919 at about 9:30 that morning? Correct?

A. Correct.

[59] Q. And you went to the Grossman's parking lot, and then walked over to Lechmere? Is that correct?

A. Yes.

Q. Was there any sidewalk that you were able to walk on?

A. No.

Q. Did you have to cross a road coming into Lechmere property?

A. No.

Q. Did you have to cross any kind of an entrance to Grossman's?

A. No, we parked in Grossman's parking lot and walked up the grass.

Q. Now tell me exactly what you did as you entered the Lechmere property?

A. We went on Lechmere property. We were on the grassy knoll, that we considered at that time, and still do, public property.

* * *

[60] Q. Take me now, as you came onto the Lechmere property that morning, to what point into the premises you went?

A. Right here.

HEARING OFFICER [JUDGE BIBLOWITZ]: Where you wrote the A?

THE WITNESS: Where I wrote the A.

BY MR. JOY:

Q. At any time were you actually on the Lechmere premises?

A. No, sir, because the store wasn't open yet.

Q. At any time that day?

[61] A. No.

Q. You never came onto the Lechmere property that day?

A. On the 20th?

JUDGE BIBLOWITZ: After ten o'clock or before?

MR. JOY: At any time.

JUDGE BIBLOWITZ: At any time?

THE WITNESS: At any time?

A. We can back once, I believe, in the afternoon to hand-bill.

Q. And did you come onto the Lechmere property at that time?

A. Yes.

Q. Now focusing your attention back on the morning of the 20th, is it your testimony that at that time you did not come onto the Lechmere property?

A. Yes.

Q. And when you came onto the Lechmere property on the 20th, that was in the afternoon, was it?

A. Yes.

Q. Approximately what time?

A. I don't recall.

Q. And where on the property did you go when you came back that afternoon?

A. Parking across the street, just walked across here.

Q. In the section of the parking lot along by the grass strip? [62]

A. Yes.

* * *

Q. Did you go any further into the premises at that time?

A. No, not that I can recall.

Q. At any time later that day did you go any further into the premises?

A. On the 20th?

Q. Yes.

A. I think we handbilled in the store.

HEARING OFFICER [JUDGE BIBLOWITZ]: In the store?

THE WITNESS: Yes.

* * *

[63] Q. And Mr. Samuelson had met you before the police arrived? Isn't that correct?

A. Yes, it is.

Q. And it's your testimony that he told you to get off Lechmere property?

A. Yes.

* * *

[65] Q. And he told you that you were public property, and that you had the right to stay there?

A. He suggested again it might impair traffic flow. He said: "This is public property, but not wanting [I don't want] you to impair traffic flow. The speed limit is 50 miles an hour. The cars go by quite fast." He said: "You might want to leave before you get hurt." He suggested that we were going to get hurt or impair traffic flow. He didn't say: "You will be arrested if you stay."

* * *

[68] Q. Ms. Meucci, did you, or any representative of the union, ever obtain a complete list of the names and addresses of the employees of the Lechmere Newington store?

A. We obtained a list, not a complete list.

Q. From whom did you obtain the list?

A. From the Motor Vehicle Department.

Q. Tell me how you went about obtaining that list?

A. Copied down an employee's registration, bring it to the Motor Vehicle Department.

JUDGE BIBLOWITZ: The registration?

THE WITNESS: The license plate of the employee. And bring it to the Motor Vehicle Department, and they'll give you the name and address that the vehicle is registered to.

BY MR. JOY:

Q. And did you do that in this case?

A. Yes.

Q. How many times did you do it?

JUDGE BIBLOWITZ: For how many people or how many times?

BY MR. JOY:

Q. How many times did you go to the Division of Motor Vehicles?

A. I'm not sure how many times, sir. I obtained 49 names.

[69] Q. And do you have a record of the names you obtained?

A. Yes, I do.

Q. Where is that record now?

A. Our attorney, Tom Meiklejohn.

MR. JOY: Your Honor, I'd request that that be produced so that I may look at it.

JUDGE BIBLOWITZ: If general counsel wants to willingly turn it over, that's fine. I certainly have no objection to that.

MR. MEIKLEJOHN: Your Honor, I see no reason why the document needs to be turned over.

MR. GAGNE: I'd join in the objection. I don't see what relevancy it has to this proceeding.

MR. MEIKLEJOHN: Also, Your Honor, as the witness testified, she was unable to get — the witness testified she was unable to speak to most of the employees through this method. However, the documents which she turned over does contain notations regarding the reactions which some employees had to be contacted by the union. To the extent that those reactions were favorable, I think it would be highly potential for the employer's having great prejudice in then having that information turned over.

Given that fact, and the fact I see no basis for the information being turned over. I would decline to turn it over voluntarily.

* * *

[71] Q. However, getting back to your records, Ms. Meucci, you indicated you were able to get the license plate numbers of 49 employees that worked at the Lechmere Newington store, in what time frame?

A. July through August, or June through August.

Q. And did you yourself attempt to contact these people?

A. Yes.

Q. Did anyone else?

A. Yes.

Q. Would you identify who else from the union attempted to contact employees of Lechmere's Newington store?

A. Mr. Looke came with me on several occasions to make housecalls.

Q. Would you identify his first name?

A. Jim Looke isn't here. He's in the hospital right now. Oh, L-o-o-k-e. Jim.

Q. His position with the union?

A. He was a union representative also.

Q. He would make housecalls with you?

[72] A. Yes. We only did that on two occasions.

Q. Did he make telephone calls?

A. Some.

Q. Do you know how many?

A. No, quite a few of the numbers were unlisted.

Q. How many were unlisted?

A. Out of the 49 eight of those were either assistant managers or managers, so it narrows it down to 41. Out of those I'd say at least 20 were unlisted.

Q. Is that an approximate response, or do you know exactly?

A. That's an approximate response.

Q. Would the notebook that you kept help to refresh your memory as to exactly how many numbers were unlisted?

A. Would you like me to count them?

Q. It calls for a yes or no answer.

A. It would.

MR. JOY: Your Honor, here again, I'd like to offer the notebook for purposes of present refreshment of recollection.

MR. MEIKLEJOHN: Well, if the purpose of this is to have the witness refresh her recollection by reviewing the document, and then requesting the document on the basis that it's been used to refresh her recollection, I would object.

I would object to it being used as a basis for [73] requiring production of the document.

MR. GAGNE: I also object, Your Honor, on the basis that the recollection he's trying to refresh I think is irrelevant to these proceedings. So even if he refreshes the recollection, it is still not relevant to what's going on here.

MR. JOY: Your Honor, I merely state that all Mr. Gagne has to do is read *NLRB v. Babcock and Wilcox, Nico [SCNO] Barge Lines v. NLRB*, and a whole host of other cases that go into the exact definition of what is reasonable alternative means of communication, and what evidence does or does not support the finding, or lack thereof. And this is precisely on point in that regard.

And I might add that it's our position, and it's a position taken by Chairman Stevens, that this is the first line of inquiry in these kinds of cases. So I think it's directly relevant, and I can [sic] assert strongly enough that I'm entitled to get this information.

JUDGE BIBLOWITZ: I don't think general counsel or Mr. Gagne is arguing that this is not what the union did to get in touch with the employees is irrelevant. They are arguing, I believe, that Ms. Meucci's notes in regard to the people she got the names from the Motor Vehicle Bureau, those notes should not be turned over to you.

I don't think they were claiming at any time the [74] fact that they went to get these names, and they tried to call them and visit them. They are certainly not trying to claim that is irrelevant. Is that correct?

You are not claiming that what the union did to get in touch with these people is irrelevant to this proceeding?

MR. MEIKLEJOHN: Well, our principal theory is that regardless of alternative means, they are entitled to access. But it is our backup theory that the availability of the alternative means of access, or the means that were available were inadequate. I can't argue on the question of —

My concern is that there is information in these documents which could be embarrassing to at least a couple of these employees, if it was made available. That's my point.

JUDGE BIBLOWITZ: I'll sustain your immediate objection about using them to refresh recollection. I reiterate that point again. I'm not going to determine how relevant it is. Subpoenas are issued for that. But at this point let's go on.

MR. JOY: For the record, note my exception to that ruling.

JUDGE BIBLOWITZ: I understand.

MR. JOY: Especially given the fact that the witness just testified that it would refresh her memory.

MR. MIEKLEJOHN [MEIKLEJOHN]: I would also note for the record that [75] she did not testify to a lack of memory. She answered the question.

JUDGE BIBLOWITZ: Let's move on.

BY MR. JOY:

Q. How did you know that eight of the 49 were managers?

A. Information from some of the employees.

Q. So you were in direct contact with some employees?

A. One or two.

Q. Could it have been more?

A. No.

Q. But these one or two employees supplied you with information regarding other employees in the store? Correct?

A. Well, Mr. Samuelson identified himself, the assistant manager identified himself. So from there we knew those two, and there were like six more.

MR. JOY: Your Honor, I move to strike as non-responsive. I'd like to have the question read back.

JUDGE BIBLOWITZ: It was responsive. It was partially responsive. You know, you asked how she got that information, and she said two of the individuals Samuelson and the assistant identified themselves. So, so far they're responsive, not totally. There may be more.

MR. JOY: I thought I asked what information these individuals, this employee or employees, provided.

[76] JUDGE BIBLOWITZ: I'm not saying it was totally responsive. There may be more coming.

MR. JOY: Let me withdraw my comment then.

BY MR. JOY:

Q. Apart from Mr. Samuelson identifying himself and his assistant, is it your testimony that you obtained information

that six other employees, whose names and addresses you had, were managers from employees or an employee in the store?

A. An employee in the store.

Q. And how often did you obtain the information from that employee in the store?

A. About what?

Q. How often did you obtain information from that employee about names and addresses?

MR. GAGNE: I would object. She could have been getting information about the odds on the World Series game or something.

JUDGE BIBLOWITZ: He's talking about the information in the question. Overruled.

BY MR. JOY:

Q. How often did you obtain information relating to the names and addresses of other employees in the store, from the employee you talked with?

A. On one occasion.

Q. On one occasion?

[77] A. Mm mm.

Q. Now these other 41, did you compile a computerized mailing list?

A. Yes, we did.

Q. And where did you program that mailing list? On whose computer is that program?

A. On the union's computer.

Q. And in the union's computer there are 49 names and addresses of Lechmere employees?

A. 41.

Q. 41? Okay. Now I'm going to show you — before I do that, let me ask you if, at some point, you stopped attempting to obtain the names and addresses of Lechmere employees by writing down license plate numbers in the parking lot?

A. Yes.

Q. When did you stop attempting to do that?

A. Approximately the end of July.

Q. And why did you stop?

A. We felt that we weren't reaching — we were trying other methods to reach the employees.

Q. And what were those other methods?

A. The newspaper.

Q. Now were you involved in the placing of ads in the Hartford Courant?

[78] A. Not me directly.

Q. Are you familiar with the circulation area of the Hartford Courant?

A. Yes.

Q. Can you tell me what is the circulation area of the Hartford Courant?

A. It's probably one of the largest papers in Connecticut.

Q. Do you know if it is the largest paper in Connecticut?

A. No, I don't.

Q. Now do you know if the circulation of the Hartford Courant covers Newington, Hartford and New Britain?

A. Yes, I do.

Q. How do you know that?

A. They tell you. I assumed they do.

Q. Who is they?

A. I assumed that the Courant covers those areas.

Q. Did you have any discussion with the circulation manager or anyone in circulation? No?

A. No, I didn't.

Q. At some point in time the union changed from focusing on the employees of the Newington store to the general public, did it not?

A. Yes, it did.

Q. And can you tell us when that was?

A. August 7th.

[79] Q. And can you tell us why that was?

A. No, I can't, sir.

Q. Now what happened on August 7th?

A. We had employees go to the store with signs on, explaining to the public that this was a non-union store.

Q. And were you present on the picket line?

MR. MEIKLEJOHN: I'm going to object at this point, Your Honor. Again, the occasions which they attempted to enter the parking lot and were barred from the parking lot, occurred prior to August 7, 1987.

The issues in this case, at least with respect to access, concern the leafleting of employees' cars, and the period in which the campaign was focused on employees. We are not confronted with any allegation of a refusal to allow access, or barring them from the premises for the purposes of communicating with the general public.

They didn't attest that issue, and that issue is not in court. We are focusing solely on —

JUDGE BIBLOWITZ: (Interrupting) What's the relevance of what occurred? As you stated in your opening statement, there was picketing directed towards the general public, beginning August 7th, I believe, but there is nothing in the complaint. Why do I want to hear this?

MR. JOY: Well, Your Honor, I believe it's relevant from several points of view. But the primary point of view [80] is the fact that the intended audience changed may bear on remedy.

The general counsel is arguing that there were instances, two instances, where these individuals were not allowed on the parking lot. As a remedy, he is seeking an order allowing them on the parking lot. I would argue that at some point in time they changed their intended audience to the general public, and abandoned directing it towards the employees. And, therefore, any order, if one were ever entered, would be limited in time to the point in time where they changed their intended audience.

I believe I have the right to establish that point in time, and I have the evidence to do so. And if allowed to examine this witness, I would be able to show that all of actions taken after August 7th were directed toward the general public.

Furthermore, I would state that these picketers were allowed to go up on the grassy area that came up to the employee parking lot without interruption for eight months. They certainly could have picketed aimed at the employees right there, and had that message focused right on the employees. They chose not to do that. I think that bears on the intended audience, which is one of the factors under the Fairmont doctrine to be considered in weighing the strength of the Section 7 right asserted.

[81] So, therefore, I would say that the Section 7 right asserted changed from organization to informational. And that bears on a whole host of issues, not the least of which is the potential remedy in this case.

JUDGE BIBLOWITZ: I disagree. The mere fact that they may have engaged in, or did engage in such activities beginning August 7th does not mean that if I should find a violation here, they're not entitled to a remedy because they changed their audience on a certain date.

They may have changed it for whatever reason, but that makes no difference.

Let's go on. So sustained.

MR. JOY: Note my exception.

BY MR. JOY:

Q. Now, Ms. Meucci, you indicated in your affidavit that a meeting was called, a union meeting was called in September, did you not?

A. Yes.

Q. And was that a meeting for the purpose of getting Lechmere Newington employees to attend?

A. No, I don't think so.

Q. Were employees invited?

A. No.

Q. In your affidavit, this is on page 2, you state that at least two people did not show up for a union meeting in [82] mid-September. Does that refresh your memory as to whether there was a union meeting?

MR. GAGNE: Objection, Your Honor. I wonder if he could show her the whole affidavit rather than just reading from it.

JUDGE BIBLOWITZ: Show it to her. The question is: does that refresh your recollection as to whether the September meeting was a union meeting for employees, for Lechmere employees or associates?

THE WITNESS: I'm not in charge of every meeting. This could have been for employees.

JUDGE BIBLOWITZ: Could have been for employees?

THE WITNESS: It sounds like it was.

JUDGE BIBLOWITZ: That's your affidavit? Correct?

THE WITNESS: Yes.

JUDGE BIBLOWITZ: After looking it over what's your best estimate? Was that a meeting for Lechmere employees, or was that some other type of meeting?

THE WITNESS: I believe it was for three Lechmere employees.

BY MR. JOY:

Q. And how many home visits did you personally make?

A. Approximately ten.

Q. How many telephone calls did you make?

A. Approximately eight or nine myself.

[83] Q. Did you keep a log of those telephone calls?

A. Not a log. On the sheets I would just put if I reached someone, if they were home, if I spoke with the employee.

Q. And how many telephone calls did Mr. Looke make? Do you know?

A. I'm not sure.

Q. Do you know if he kept a log?

A. No.

Q. Did he report to you the results of his attempts to make telephone contact?

A. If he made any contact he would have put them in the book, put them in the book also.

Q. Now you indicated that your efforts were frustrated in part because parents would intervene? Is that correct?

A. Yes, it is.

Q. How many times did parents intervene?

A. Approximately eight times.

Q. And is that indicated in the notebook as well?

A. Yes.

Q. After the names and addresses were put into the union computer, were there address labels printed out?

A. Yes.

Q. Were mailings sent to these 41 people?

A. Yes.

[84] Q. How many mailings were sent to these 41 people?

A. Approximately four.

Q. Four to each one of the 41 people?

A. Yes.

Q. And did any of these mailings contain a return self addressed — strike that.

A return envelope or postcard with no postage necessary, addressed to the union?

A. Yes.

Q. And how many did you receive?

A. One.

Q. But each employee of the 41 got four?

A. Yes.

JUDGE BIBLOWITZ: At least four was sent to the individuals, but I don't know if whe [she . . . they] can testify that she received them. Is that correct?

THE WITNESS: Yes.

BY MR. JOY:

Q. Did you ever receive back any of the envelopes that you sent addressed to these employees, stating address unknown, or addressee no longer here?

A. Not to my recollection.

Q. Would that be indicated in your notebook?

A. No.

* * *

[86] Q. I show you a set of documents that has been marked as Respondent's Exhibit 1a, b and c, Ms. Meucci, and I ask [87] you if you can identify that information for me?

A. Yes, that is literature we would send out.

Q. Is that an example of the kind of literature you were sending to Lechmere employees?

A. Yes.

Q. Is the address label addressed to a Joseph Downs?

A. Yes.

Q. Is he one of the Lechmere employees that you had on your list of names and addresses?

A. I don't recall.

* * *

Q. Ms. Meucci, did you handbill at Lechmere on June 23, 1987?

A. I believe we did.

Q. Now, Ms. Meucci, could you tell me what handbilling in the Lechmere parking lot would have done for your organization effort that picketing on the grassy area did [88] not?

* * *

BY MR. JOY:

Q. The union picketed on the grassy area from August until March, August of 1987 until March of 1988? Correct?

A. Correct.

Q. And that grassy area borders on the section of the parking lot where the employees park? Is that correct?

A. Correct.

* * *

[89] Q. Of the 41 names that you mailed literature to, do you recall where they were located geographically?

A. The towns surrounding Newington: Wethersfield, Hartford, New Britain, Newington.

Q. What was the furthest away address that you mailed to? Do you recall?

A. Wethersfield.

Q. And is Wethersfield contiguous with Newington?

A. Yes.

* * *

[91] *Redirect Examination*

[92] BY MR. MEIKLEJOHN:

Q. When you went to the parking lot to place leaflets on cars, did you ever vandalize any cars?

A. No.

Q. Did you break into any cars?

A. No, we didn't.

Q. Did you threaten anybody?

A. No, we didn't.

Q. Did you insult anybody?

A. No.

Q. Did you hit anybody?

A. No, we didn't.

Q. Did you shake baseball bats at anybody?

A. No, we didn't.

Q. Carry any weapons?

A. No.

* * *

Redirect Examination

BY MR. MEIKLEJOHN:

[95] Q. Do you recall going onto the premises of the [96] Lechmere Plaza parking lot or performing any other functions on that parking lot other than those connected with distributing leaflets or picketing?

JUDGE BIBLOWITZ: What day?

MR. MEIKLEJOHN: During the summer of 1987.

A. Yes. I used the telephone to call in to my office.

Q. And where are those telephones that you used? Are those the telephones that we stipulated are —

A. They're on the Lechmere property. Not the Lechmere property, but if you come down past Come Place, and come in the side driveway, and go to the back of the plaza, they're in the plaza. They're right in front of Card Gallery.

Q. That's right in the middle of the building that's labelled "Plaza"?

A. Yes.

Q. Is there any way to get to those phones without going through the parking lot, or some portion of the parking lot?

A. No.

MR. MEIKLEJOHN: That's all I have, Your Honor.

JUDGE BIBLOWITZ: Anything further, Mr. Joy?

Recross Examination

BY MR. JOY:

Q. How many public telephones were there at the time you attempted to use the one that you did? Do you recall?

[97] A. Two.

Q. Were they both in operation at that time?

A. Yes.

Q. Do you happen to know what store the other one is in front of?

A. No, I don't.

Q. If I told you Radio Shack, would that serve to refresh your memory?

A. No.

Q. Do you remember Radio Shack being open at the time?

A. No. I only remember four stores being open at that time.

Q. Do you remember that one was not a Radio Shack?

A. I don't recall.

Q. By the way, running in front of that strip of stores that is marked "Plaza" on the map, is there a road? Do you recall?

A. Part of the parking lot.

Q. Did you recall a road?

A. I don't recall a road. I just recall another part of the parking lot.

Q. Was that plaza under construction when you went to use that telephone?

A. No, it wasn't.

Q. That was in June of 1987 you used the telephone?

[98] A. Yes.

MR. JOY: I have no further questions, Your Honor. But at this time I have a written request for a subpoena duces tecum addressed to yourself requesting the issuance of the subpoena duces tecum to Lisa Meucci, to bring "any log book, notebook or other. . . ."

JUDGE BIBLOWITZ: Don't tell me what you want. You have to fill out the subpoena. I will give you a subpoena shortly.

* * *

[103] MR. MEIKLEJOHN: General counsel calls Giovano Cassarino.

Whereupon,

GIOVANO CASSARINO

* * *

[104] *Direct Examination*

BY MR. MEIKLEJOHN:

Q. Mr. Cassarino, by whom are you employed?

A. By United Food and Commercial Workers, Local 919, Hartford, Connecticut.

Q. What is your position with Local 919?

A. Business agent/organizer.

* * *

Q. Drawing your attention to June 20, 1987, which was a Saturday, do you remember what you did that morning?

A. Yes, we met in the parking lot with some other three employees from the local.

* * *

[106] Q. What happened when the policemen came?

A. He asked what we were doing. We said we were on state property. Just to talk to employees going to work. He didn't see nothing wrong with that, so he went to talk to the manager. After a while he came back to us, and he said: "There's nothing we can do about it because you are on state property. We cannot make you leave. The only thing is you'd better watch your back because of the traffic." Which is there's a lot of cars going by, about 50 mile an hour they're going by.

Q. Did you go to the property on any other days to leaflet cars?

A. Yes, I want [went] inside when we handbilled the parking lot.

Q. When you handbilled the parking lot on the 18th did you physically hand a leaflet to an employee?

[107] A. Yes, I did, one employee.

Q. And did you see what happened to the leaflet that you handed to the employee?

A. Yes, the employee was walking towards the entrance to the store. One of the security guards, which was a woman, grabbed the paper from the guy's hand.

MR. MEIKLEJOHN: That's all I have from this witness.

* * *

[114] MR. MEILEJOHN [MR. MEIKLEJOHN]: General counsel calls Mark Espinosa. Whereupon,

MARK ESPINOSA

having been first duly sworn, was called as a witness herein, and was examined and testified as follows:

* * *

Q. Mr. Espinosa, by whom are you employed?

[115] A. United Food and Commercial Workers Union, Local 919.

Q. What is your position with Local 919?

A. Business rep.

Q. How long have you held that position?

A. That position since January 2, 1986.

Q. Were you employed by Local 919 before that?

A. In years past, in a different capacity.

Q. Drawing your attention to June 20, 1987, what did you do that morning?

A. I arrived in the vicinity of the store, I should say across the street from the Berlin Turnpike. Parked at the Bradlee's Department Store, and met my fellow workers.

* * *

[118] Q. What happened after the police got there?

A. The police asked us what we were doing, who we were. They did take information down about us, the representatives from the local. They — we said we were not intending to cause any problems, we felt we had a right to be somewhere, and we were here to distribute the information. But that if we were told to leave we would leave, because these were the instructions we were under.

At that point the police, I believe it was the sergeant, he left and walked away and spoke with the main man.

[119] Q. You say the main man?

A. The main man from the company there, Mr. Samuelson. And we stayed by, just waiting for a response. And it was a brief time, I don't know how long. A minute or two minutes maybe. And they came back, the police officer came back to us, and told us that indeed we did have a right to be there.

I remember very specifically he said: "As long as you have a right to be within ten feet from the curb." He did state that the traffic was a problem on the Berlin Turnpike, the speed of the traffic was a problem. He cautioned us. He had stated that there was a policeman hit on that highway very recently before that, and so he said he did not want us causing a public nuisance. I remember that.

We said we did not intend to. I believe that's all there was. That's all I can remember, I believe.

* * *

[124] MR. JOY: I think we may have an objection, and I think I may need to make an offer of proof on this. I want to ask Mr. Espinosa some of the same questions I asked, or the same questions I asked Ms. Meucci, with respect to entering into the Lechmere premises.

JUDGE BIBLOWITZ: Premises of the store?

MR. JOY: Into the Lechmere store itself. I have a series of those questions. I anticipate counsel for the general counsel's same objection, and I will make an offer of proof, incorporating by reference all of the reasons previously stated, if that procedure is acceptable to counsel.

JUDGE BIBLOWITZ: I assume you would object?

MR. MEIKLEJOHN: I will make the anticipated objection.

JUDGE BIBLOWITZ: I can say I would rule the same way I did before.

BY MR. JOY:

Q. Mr. Espinosa, at any time did you go inside the Lechmere store to solicit or handbill?

MR. MEIKLEJOHN: Objection.

MR. GAGNE: Objection.

JUDGE BIBLOWITZ: Sustained.

MR. JOY: Let the record reflect that the counsel intends to ask the same questions.

JUDGE BIBLOWITZ: Okay, you have the offer of proof made to Ms. Meucci.

[125] MR. JOY: And I would like to, at this juncture, for the record, incorporate by reference all of the reasons stated in my earlier offer of proof. And if counsel is satisfied, I will incorporate by reference all the questions I asked of Ms. Meucci, relating to being inside the premises, to Mr. Espinosa.

* * *

[126] MR. MEIKLEJOHN: Now general counsel calls Joseph Clifford Gagnon.
Whereupon,

JOSEPH C. GAGNON

having been first duly sworn, was called as a witness herein, and was examined and testified as follows:

* * *

Q. Mr. Gagnon, by whom are you employed?

A. United Food and Commercial Workers Union, Local 919.

Q. What's your position with Local 919?

A. Recording secretary.

* * *

[134] MR. JOY: Your Honor, here again, I'm notifying Your Honor and the parties that I would like to ask Mr. Gagnon whether he was inside the store distributing literature, and I would repeat all the questions that I asked Ms. Meucci. And I'm assuming counsel for the general counsel's objection, and counsel for the charging party's objection, Your Honor's ruling, and my offer of proof [135] incorporated by reference to everything I said earlier.

JUDGE BIBLOWITZ: The record will reflect that all that happens.

Assume all that happens, maybe we can save the time. My ruling will be the same. I'm sure Mr. Meiklejohn's objection will be the same, and your offer of proof will be the same?

MR. JOY: That's correct, Your Honor. I'm sure the parties will stipulate to that procedure.

JUDGE BIBLOWITZ: I'm sure.

MR. MEIKLEJOHN: It's fine with me.

MR. GAGNON: It's fine with me, Your Honor.

BY MR. JOY:

Q. Mr. Gagnon, did Mr. Samuelson, or did any other representative of Lechmere ever instruct you to get off that grass area at any time after the incident to which you just testified just now?

A. No.

Q. And did you yourself picket on that grass area at any time after this day in question?

A. Yes.

Q. Could you tell me how often you picketed on that grass area yourself?

MR. MEIKLEJOHN: I'm going to object. We have an understanding, first, that the fact that something has been [136] stipulated to does not prevent — is not meant to prevent the parties from educating [adducing] additional information. Nevertheless, for the reasons I objected to testimony regarding the contents of picketing after August or whatever the date is, to any additional testimony or questioning regarding the events of August and thereafter.

JUDGE BIBLOWITZ: Sustained.

MR. MEIKLEJOHN: We're not complaining they were kicked off the property after that.

JUDGE BIBLOWITZ: You have the witness's testimony that anything after that is irrelevant.

MR. JOY: Just let me state my position with respect to this testimony, and let me make an offer of proof.

If allowed to ask the witness, I would assume his testimony would be that he did engage regularly in the picketing that took place over the eight month period on that grass area. And that relates back to this incident on the 20th, from the point of view that if a violation took place at all on the 20th, because of Mr. Samuelson's alleged instruction to these people, thinking that they were on Lechmere property when they weren't, then it was derimonous [de minimis] that it had no effect whatsoever, no significant effect certainly, on their ability to use that property for their Section 7 purposes.

And, therefore, I want to merely use it as [137] corroborative, to support my argument, which I will make later in a briefing, that this was at best a technical violation, an instruction that the union, by its own admission, ignored. And that's corroborated by the fact that they were allowed to patrol the premises.

JUDGE BIBLOWITZ: I'll sustain the objection.

. . .

[140] JUDGE BIBLOWITZ: Okay. First witness?

MR. JOY: Yes, Your Honor, I'd like to call Roger Samuelson.

. . .

[141] *Direct Examination*

BY MR. JOY:

Q. Mr. Samuelson, I direct your attention to the document which has been marked Joint Exhibit 2, which for the record is the map so-called of the Lechmere Plaza. Is that correct?

A. Yes, that's correct.

Q. Can you tell us if the Lechmere store is connected to the strip of satellite stores identified as the plaza in Joint Exhibit 2?

A. No, it is not. There is a truck roadway in between both areas, and it's approximately 112 feet from building to building.

Q. Would you describe for the Administrative Law Judge [142] and the record, what the opening is at the very south side of the property?

A. Okay, yes. On the very far left hand side of the exhibit, by the front grass area, there's a turnoff lane which is a one way lane, which enters behind the building, which is exclusively for trucks and delivery services such as UPS, etc.

Q. Does that road go behind the Lechmere store?

A. Yes, it does.

Q. Is there a loading dock in back of the Lechmere store?

A. Yes, that's correct.

Q. Would you identify that loading dock for the record, please?

A. Yes, should I mark it with a D?

JUDGE BIBLOWITZ: Why don't you make it LD?

A. Right on the corner of the triangle?

Q. Yes.

A. Right above where it says Lechmere. LD is loading dock.

Q. Are there parking lots that surround the Lechmere store?

A. Parking spaces?

Q. Yes, parking spaces.

A. Yes, there are.

[143] Q. Would you describe the parking space which is to the east side of the Lechmere store?

A. The east side being —

JUDGE BIBLOWITZ: Below the —

A. Below the building?

Q. Yes.

A. Between —

Q. The Berlin Turnpike. Right.

A. That is the pick up area.

Q. Is that designated as a pickup area?

A. No. There is a sign on the building itself that says "pick up area". It is not as descriptive to some customers, but generally the customers know that that is where they pick up the merchandise.

Q. Tell us what the customers do if they need to pick up some merchandise?

A. Well, basically the ones that have experienced the shopping experience before, will know if they are going to buy a large ticket item, that they will park back there initially, go inside, make their purchase, go to our pick up counter, get the merchandise, and get help to put it in the car.

For those customers that are doing it perhaps for the first time, they may park out in the front area, go in, make their purchase, and find that they will have to pull back by [144] the pick up area, to the associate that they dealt with, and then pick up their merchandise from there.

Q. Now are associates asked to go in a certain entrance of the store?

A. Yes, they are. All the associates are asked to go into the pick up area entrance itself, and prior to store hours that is the only door that is open.

Q. How many doors to the store are there? That allow for access by shoppers?

A. By shoppers?

Q. Entrances I guess.

A. Well, there are two entrances. There are four doors at each entrance, one automatic in, one automatic out, and the two middle ones for whichever the flow may be.

Q. Now we have stipulated to the fact that there is a no solicitation/no distribution policy, Mr. Samuelson, and also stipulated to the fact that that was promulgated in 1982. Can you tell me whether or not you have had occasion to enforce that policy in the past year or year and a half since the store has been opened?

A. Yes. Since the store has opened in November of 1986, I can recall specifically at least [least] four occasions where I've had to enforce the no solicitation policy.

Q. Tell us, if you can recall, when the first occasion was?

[145] A. The first occasion was probably just a few days or first week into the grand opening, when the AAA Automobile Association located in West Hartford, Connecticut, someone had come into the parking lot and taken these sign up cards and put them on the windshields of cars, both employees and customers.

Q. What, if anything, did you do in response to that?

A. At that point in time I did not, nor did any of my people, see the individuals placing the leaflets on the windshields. But as soon as it was reported I had all the leaflets removed.

MR. GAGNE: Objection, Your Honor, move to strike. Based on hearsay.

JUDGE BIBLOWITZ: Overruled. As soon as you found out about it did you tell your people to do anything?

THE WITNESS: I instructed one of our people to remove the brochures from the windshields and bring them to me.

BY MR. JOY:

Q. And did you do anything else?

A. Yes. Once I found out who it was from I then looked up in the phone book their telephone number, and called the branch in West Hartford, found out who the branch manager was, his name was Paul Windsor. And I spoke to him on the telephone.

Q. What did you tell him?

[146] A. I explained that we had a no solicitation policy, and that I couldn't allow any of his people on our property for the purpose of soliciting or distributing handbills.

Q. What, if anything, was his response?

A. He apologized for the incident, and said "this is a fairly common occurrence." Being new to the area, in other words we had just opened, he didn't know what our policies were, and apologized for it to happen, and said he would put us on, I guess, his "no distribute" list.

* * *

Q. When, if you can recall, was the next occasion you had to enforce the no solicitation/no distribution policy?

A. I had a phone call around the Thanksgiving period of 1986, again just a short period after we were opened, the Salvation Army had called and wanted to know if they could one of their bell ringers, one of their Christmas bell ringers, by our entry during our Christmas season. I had to tell them no, again based on our no solicitation policy. And wished them well with their campaign, but it would have to be not on Lechmere property.

Q. I take it they did not send any bell ringer to Lechmere [147] property?

A. That is correct. They respected our wishes, and abided by our rules.

Q. When, if you can recall, was the next occasion when you had to enforce the no solicitation/no distribution no access policy?

A. The next occurrence happened later in February of 1987. I had discovered that some Burger King coupon brochures had been placed on the windshields of the cars, and our

people brought me the brochures so I could identify who it was. There were two Burger Kings listed on there. I called one of them and asked for the manager on duty, and also explained to him that we had a no solicitation policy, and that I would have to prohibit him in the future from distributing such material?

Q. Did he have any response?

A. He apologized for the incident, and said: "Don't worry about it, we won't be back to do that."

* * *

Q. I show you, Mr. Samuelson, a document which has been marked Respondent's Exhibit 2, and I ask you if you can [148] identify it, please?

A. Yes, that is one of the brochures that were placed on by the Burger King people.

* * *

Q. Does this document contain a date?

A. Yes, it does. Right on the bottom it says "offer expires February 28, 1987."

Q. Does it contain some handwriting on the top of it?

A. Yes, that is my handwriting on the top.

Q. Could you explain what is meant by the handwriting on the top?

A. I just made a notation that I had called Burger King [149] on 3/3.

Q. 3/3 what?

A. 3/3/87. To register my complaint about the distribution of the handbill.

Q. And why did you write windshield on there?

A. Because they were placed on the windshields of cars, and it was just a notation I made to myself at the time.

* * *

JUDGE BIBLOWITZ: The 3/3 date that you called Burger King, was that the date that you first noticed these coupons on the windshields?

THE WITNESS: No. I believe it was like the next day or the day after.

JUDGE BIBLOWITZ: Okay, so like a day before. Did it occur to you that it was kind of strange that they left these coupons on the windshields after the offer expired?

THE WITNESS: As a matter of fact it did. I really thought to myself that they had had an overrun of coupons, and just on the last minute they wanted to distribute them and get them distributed out into the area.

* * *

Voir Dire Examination

BY MR. MEIKLEJOHN:

Q. You testified that you found these on the windshield [150] yourself or someone else?

A. As I recall, I think a couple of people had found them. I found one on my windshield as I was going home that day, and others were collected and put on my desk.

Q. Do you know if this is the one you found on your windshield?

A. Yes, it was.

Q. And when you got it that's when you wrote the word "windshield" on it?

A. No, I knew that from when I got back to work a day or two later, that that's where it was, and that's when I wrote the date on and made a contact on the phone.

Q. So you wrote windshield and the date at the same time?

A. No, I believe they were two different times.

Q. When did you write windshield on there?

A. I don't remember exactly. It could have been as I got in my car to go home. I just wrote that it was on my windshield, and placed that on the seat of my car and dealt with it a day or two later. Or it looks like I used a different type pen to write the date when I called to complain about the solicitation.

Q. When did you cross out the date?

A. When I had made a tangible contact with somebody at Burger King, and they said they would stop, they would not [151] do it again.

Q. When you first called you didn't get a hold of anyone?

A. Have you ever tried calling a Burger King and asking for the manager on duty?

Q. The first time you called was March 3, 1987?

A. That's right.

Q. Did you speak to anyone in authority there?

A. Yes, I asked for the manager on duty. He gave me his name. I don't recall his name, and I did not write down his name.

Q. He told you that he wouldn't let it be distributed again?

A. That's correct. He sounded like someone who was in charge, as opposed to somebody just making french fries, or whatever else they do.

Q. How many times did you call before you talked to him?

A. Just once.

Q. When did you write the date 3/3/87 on there.

A. When I sat down to make the call. As I'm dialing I just put that date down.

Q. When did you scribble the date off?

A. After I knew I had talked to somebody, and felt comfortable that I had done my job.

[152] Q. You only had to place one call before that happened?

A. I was very lucky on this one. Yes.

Q. So how long elapsed between the time you wrote the date and the time you scribbled over the date?

A. It was the same phone call. It was a minute. I remember having to wait a minute to probably two minutes for the manager to come to the phone. He was not the person who answered the phone, but it was within minutes.

MR. MEIKLEJOHN: I'm going to object to this document, Your Honor. I think there are considerable circumstances which draw the authenticity of the document into

question. First is the fact that it was apparently — the witness is claiming that the document was distributed after the offer had expired.

The second is the unexplained circumstances with respect to the date the witness [witness] claims he wrote the date down when he made the phone call, and then crossed the date out a matter of minutes later. An examination of the original document will disclose that those two actions were also taken supposedly with two different pens.

I think there is considerable question as to whether this document was actually placed on employee windshields or not, as alleged by the witness.

* * *

[153] JUDGE BIBLOWITZ: Okay, received as Respondent's 2.

* * *

BY MR. JOY:

Q. Had there been another time when you had to enforce the no solicitation/no distribution/no access rule, to the best of your recollection, Mr. Samuelson?

A. Yes, I distinctly remember another situation.

Q. Can you tell us about that?

A. It was further into the springtime, and the only way I knew the date, because I did not record it, was that the weather was better out, and there were two Girl Scouts outside selling cookies. I had to ask the two Girl Scouts to leave the premises, and explained that we had a no solicitation policy to them. And they did leave.

Q. To your knowledge, have there been any other instances where representatives of Lechmere have had to enforce the no distribution/no solicitation/no access rule?

[154] A. Yes, there have been.

Q. Can you tell us, to the best of your recollection, those other instances?

A. I know our assistant store manager, Steve Mittler, has on a couple of occasions had to deal with that circumstance also.

* * *

JUDGE BIBLOWITZ: Okay, in an off the record discussion Mr. Joy proposed a stipulation to Mr. Meiklejohn. Mr. Joy, do you want to put that proposed stipulation on the record, and [see] how Mr. Meiklejohn, on the record, responds?

MR. JOY: I would, Your Honor. The stipulation is as follows:

At no time did the employees of the respondent engage in handbilling or picketing at the Lechmere, Newington location, either on the public way or on Lechmere property.

MR. MEIKLEJOHN: I can stipulate to that. Yes.

MS. COLLINS: I can stipulate, Your Honor.

JUDGE BIBLOWITZ: And you are?

MS. COLLINS: I am Barbara Collins. I am a substitute this morning for Attorney Gagne.

JUDGE BIBLOWITZ: Okay, Barbara, B-a-r-b-a-r-a?

MS. COLLINS: Yes, that's correct.

JUDGE BIBLOWITZ: And Collins, C-o-l-l-i-n-s?

MS. COLLINS: That is correct.

JUDGE BIBLOWITZ: Are you associated with Mr. Gagne?

MS. COLLINS: Yes, I am.

JUDGE BIBLOWITZ: And you will stipulate on behalf of the charging party?

[161] MS. COLLINS: That is correct.

JUDGE BIBLOWITZ: Shall we continue with the direct examination?

MR. JOY: Thank you, Your Honor.

JUDGE BIBLOWITZ: Of Mr. Samuelson.

Direct Examination

BY MR. JOY:

Q. Mr. Samuelson, when we closed yesterday I was examining you on the subject of examples of the enforcement of

the no solicitation/no distribution/no access rule. Do you recall that?

A. Yes I do.

Q. Now, in addition to the testimony you gave yesterday, were there other occasions when you had to enforce that rule?

A. Yes, there were several.

Q. Can you tell me when they were?

A. Not specifically. We would have a lot of various phone calls that would come into my office, requesting either from a church bake sale, "can we hold a raffle out front?" You know, raffling off a car for various organizations. Our general response to every one of them was: "No, I'm sorry. No, you can't," and wish them well with their campaign, but they would not be able to solicit on our property.

Q. Was there a time when those requests were more [162] frequent than not?

A. They were extremely frequent once we opened. You know, being new in the neighborhood, which was back in the November, 1986 period, I suppose everybody recognized the fact that here is a brand new store: "Let's see if . . ."

MR. MEIKLEJOHN: Objection.

JUDGE BIBLOWITZ: Just testify to what you saw directly rather than what you assume.

THE WITNESS: Okay.

A. I saw a larger proportion of requests once we had first opened.

Q. Now has anyone ever been allowed to handbill or solicit in the parking lot at the Lechmere Plaza?

A. No, not to my knowledge.

Q. Now there's a stipulation that has been entered into the record, which describes the ownership of the entire parking lot, and it mentions Newington Associates and Conover [Konover] Management. Can you, for the benefit of the Judge and the record, tell us by looking at Joint Exhibit 2 where roughly the property line is running through the parking lot?

A. Yes, I can. Pointing out to the Judge, there is a retention basin in the back corner.

JUDGE BIBLOWITZ: That's right where the exhibit number is, in the top left hand corner of the exhibit, just to the [163] left of where it says "Plaza"?

THE WITNESS: That's correct. Just where the 35 is. It is not a straight line to the front corner, but it is a jagged line that goes through the parking lot to this corner.

JUDGE BIBLOWITZ: So you're talking about from the top left hand corner to the bottom?

THE WITNESS: To the bottom right hand corner.

JUDGE BIBLOWITZ: And a jagged line?

THE WITNESS: A jagged line. Yes. Similar to that.

JUDGE BIBLOWITZ: Thank you.

BY MR. JOY:

Q. Did Lechmere ever inquire with Conover [Konover] what their position was with respect to no solicitation/no distribution/no access to the parking lot?

A. Yes, we did.

Q. Can you tell me when that was?

A. The exact date I don't recall.

Q. Did we [sic] ever receive a letter from Conover [Konover] Management?

A. Yes, I received a letter of authorization from Conover [Konover] to enforce the no solicitation property on their property as well.

MR. JOY: I'm going to ask to have the document marked.

JUDGE BIBLOWITZ: Respondent's 3?

[164] MR. JOY: Respondent's 3.

JUDGE BIBLOWITZ: Okay. Respondent's 3 has been marked.

(Whereupon Respondent's Exhibit 3 was marked for identification).

BY MR. JOY:

Q. Mr. Samuelson, I show you a document that has been marked Respondent's Exhibit 3. And I ask you if you've seen that document before?

A. Yes, I have.

Q. Is that a copy of a letter which Lechmere received from Conover [Konover] Management?

A. That is correct.

* * *

[165] MR. JOY: Yes, I'll move the exhibit into the record at this time, Your Honor.

JUDGE BIBLOWITZ: Any objection?

MR. MEIKLEJOHN: No objection.

JUDGE BIBLOWITZ: Received as Respondent's 3.

* * *

Q. Mr. Samuelson, did anyone at Lechmere, including yourself, ever have to exercise the authority that Conover [Konover] granted on behalf of Conover [Konover]?

A. No, we did not.

Q. Now does Lechmere have a booklet entitled "Welcome [166] to Lechmere"?

A. Yes, we do.

Q. And is that booklet given out to employees?

A. To every associate that is hired.

Q. When is it given out?

A. During their orientation.

Q. Would you describe what the booklet is, and what it's intended to be?

A. It gives the associate all the rules and guidelines and general policies and procedures of the company. They are allowed to take that booklet home, and if they have any questions or any issues with any of the pieces of that, we freely ask them to come back and ask what they may not understand.

Q. And is the no solicitation/no distribution/no access policy contained in that "Welcome to Lechmere" booklet?

A. Yes, it is. I believe it's page 9.

MR. JOY: Your Honor, I'm going to have marked at this point a copy of the "Welcome to Lechmere" booklet. I have page 9 duplicated. I've previously supplied general counsel with a couple of copies. What I'd like to do is have marked for

the record, and later I will move to introduce this, page 9 rather than have the whole thing reduplicated.

* * *

[167] JUDGE BIBLOWITZ: The associate's booklet has been marked as Respondent's 4.

BY MR. JOY:

Q. I show you the document that's been marked Respondent's Exhibit 4, Mr. Samuelson, and I ask you if this is one of the copies of the "Welcome to Lechmere" handbook to which you were referring a few moments ago?

A. Yes, it is.

Q. Would you refer to page 9, please? Is that the no solicitation policy to which you were referring a few moments ago?

A. Yes. The policy in the upper left hand corner.

MR. JOY: Your Honor, I move this exhibit into evidence.

JUDGE BIBLOWITZ: Any objection.

[168] MR. MEIKLEJOHN: No objection.

MS. COLLINS: No objection.

* * *

Q. Mr. Samuelson, are employees required to acknowledge the receipt of that booklet?

A. Yes, they are. There is a separate page that actually goes into the book, that they acknowledge with, and it's placed in their personnel file.

MR. JOY: Your Honor, I'm going to have marked at this point, as Respondent's Exhibit 5, an acknowledgement of the receipt form.

JUDGE BIBLOWITZ: Okay, thank you. 5 has been marked. Show it to the witness.

* * *

Q. Mr. Samuelson, I show you the document which has been marked for identification as Respondent's Exhibit 5, and ask you if this is a copy of the acknowledgement of receipt form that you earlier described?

[169] A. Yes, it is.

Q. And this is the form employees are required to sign upon receipt of the copy of the booklet: "Welcome to Lechmere"?

A. That is correct.

MR. JOY: Your Honor, at this time I move this exhibit into the record.

JUDGE BIBLOWITZ: Any objection?

MR. MEIKLEJOHN: It's on relevance, Your Honor. The individuals whose concerted Section 7 activities we're concerned with, we just stipulated were not employees of respondent, and therefore, would not have received either the handbook or the acknowledgement of receipt.

JUDGE BIBLOWITZ: The relevance, if there is any, is — it's fairly relevant. I'll receive it.

MR. JOY: Your Honor, just in response, I will briefly state that this is offered to show how seriously this employer took this policy, and how widely spread it communicated that policy.

JUDGE BIBLOWITZ: It's been received, Respondent's 5.

* * *

Q. Mr. Samuelson, is there a purpose for the no solicitation/no distribution/no access policy?

A. Yes, the purposes of the policy is to keep illegal trespassers off the property. It's to keep people from harrasing our customers. It also, due to any solicitations, may cause a confrontation in the parking lot, a broken windshield, or assault and battery charges, and any unlawful trespassers.

* * *

Q. Is there any other reason for the policy?

A. It would also greatly reduce our legal liability, by assuring that no illegal actions were taking place in the parking lot.

Q. Now with respect to the premises themselves, is Lechmere the largest store in that plaza?

A. Yes, by far.

Q. How much larger is Lechmere than any of the other stores in the plaza, would you say?

A. I believe the Card Gallery Store is about 5,000 square feet, give or take a couple of hundred. [L]echmere is approximately 70,000 square feet, so significantly larger than the largest store in the plaza.

[171] Q. Going back for a moment to the no solicitation policy, and your testimony with respect to the purpose for which that policy was promulgated, did the company receive any complaints from customers about the handbilling that the union engaged in?

A. Yes, there were some.

Q. And did the company receive any complaints from employees?

A. Many more. Yes.

Q. When you say many more, can you give me roughly an idea of how many you mean by that?

A. A couple of dozen complaints from the associates.

Q. Getting back to the premises, is there any place in front of the Lechmere store on the west side closest to the plaza for shoppers to mingle?

A. No, there is not.

Q. Are there any benches in front of the Lechmere store?

A. No, as a matter of fact there's no benches or chairs inside or outside the store.

Q. And do you have any perception of the amount of interchange of customers running between the Lechmere store and the other stores in the plaza?

A. It's basically minimal.

Q. Are there any restaurants in the plaza?

[172] A. No, there are not.

Q. Are there any bars in the plaza?

A. No.

Q. Are there any convenience stores in the plaza?

A. No.

Q. Are there any ice cream parlors in the plaza?

A. No.

Q. No restaurants of any kind?

A. None.

Q. Getting back to the period of June and July of 1987, there is a stipulation on the record that only four stores were opened at that period of time. Do you know if one of them was Radio Shack?

A. Radio Shack was not one of them that was opened at that time.

Q. Do you know when Radio Shack opened?

A. I believe it was around the November, 1987 period.

Q. You were here yesterday for testimony of Ms. Lisa Meucci, were you not?

A. Yes.

Q. Did you hear her testimony as to the public telephones?

A. Yes, I did.

Q. Did you hear also that there was a stipulation entered into the record that there were two public payphones in the [173] plaza?

A. Yes, I did. I recall one being by the current Radio Shack, and one being by Card Gallery.

Q. In June or July of 1987, do you know whether that pay phone in front of Radio Shack was operational?

A. I don't know that. No.

Q. But Radio Shack was not open at that time?

A. Radio Shack was not there.

Q. Was the road in front of the plaza at that time under construction?

A. Yes, it was.

Q. Would you describe the approach down the Berlin Turnpike heading south to the Lechmere Plaza?

A. All right. If you were to back up let's about a half mile away from Lechmere, and driving south on the Berlin Turnpike, your basic view — it's an uphill drive. Your basic view of the stores, including Lechmere, is very limited. As a matter of fact, the sign on Lechmere across the front is just about the only piece of the entire plaza that you can see as you're coming up that rise.

Q. Do you know how far from the Berlin Turnpike these two public pay phones are?

A. Probably eight to nine hundred feet.

Q. Are they visible from say 500 yards away from the entrance to the Lechmere Plaza?

[174] A. No, I don't believe so.

Q. When can you first view them?

A. Well, they're in such a position that you don't even really see the plaza until you're right alongside or parallel to the Berlin Turnpike, where you would have to take a 90 degree look to see that there was a plaza there. Of course, that's when you're in the 50 mile an hour traffic lane.

Q. Further down on the Berlin Turnpike, are there other pay phones, to your knowledge?

A. Yes, there are.

Q. How far down?

A. Just past Grossman's, which is next door to us, there is a Mobil Station. There is a phone there. On the other side of the street, where the Bradlee's store is, there is a pay phone. And a little bit further down from that, maybe a fifth of a mile or something like that, there is a State of Connecticut commuter parking lot that has a group of drive up type of pay phones.

Q. Mr. Samuelson, is the public invited to the Lechmere Plaza?

A. For the purpose of shopping. Yes.

Q. For any other purpose?

A. No.

MR. MEIKLEJOHN: I object.

[175] JUDGE BIBLOWITZ: It's already been answered. I'm not sure of the relevance. But it's been answered already. BY MR. JOY:

Q. At the relevant time period, that is June, July and August time frame of 1987, what were the store's hours?

A. The store's hours were opening at 10:00 A.M. until 9:30 P.M. Monday through Saturday.

Q. Were those also the same hours for the plaza?

A. Yes.

Q. And does Lechmere have any responsibility with respect to the parking lot at the close of business?

A. We control the parking lot lights, and thereby we have the lights automatically go off one half hour after closing, which enables enough time to allow the associates to get to their cars under full lighting.

Q. Drawing your attention to the parking lot, sir, where are customers allowed to park in that parking lot?

A. The customers are allowed to park in the entire area. No exceptions, other than the post[ed] handicapped positions which would be for handicapped only.

Q. Do customers park in the area that has been marked on Joint Exhibit 2 as an employee parking area?

A. Yes, they do.

Q. Is there any sign that indicates that that area is exclusively for the use of employees?

[176] A. No, there is not.

* * *

Q. Do customers sometimes park in that area?

A. Yes, they do.

Q. Do you know whether or not — strike that.

Where, if you know, where [were] the areas in the parking lot where the union handbilled?

A. It was through the employee parking that was designated on the other map, and also in front of the store by the main entrance, what we had marked on the map as front entrance.

JUDGE BIBLOWITZ: It's right across from where it's marked front entrance, that rectangle?

THE WITNESS: From there all the way to the grassy area.

JUDGE BIBLOWITZ: So from that point down, from the rectangle, right across from where it says front entrance?

THE WITNESS: Right. This whole area in through there.

JUDGE BIBLOWITZ: So all those parking areas.

[177] MR. JOY: Your Honor, would it help if we marked with some letters in that area, or is it sufficient as it stands?

JUDGE BIBLOWITZ: Take a pen. Do you want to use the original?

MR. JOY: Yes.

JUDGE BIBLOWITZ: We've used letter A. Why don't you, for the purpose of simplicity, mark this rectangle A, this rectangle B. I'm sorry, mark this rectangle B, this rectangle C and this one D. How's that?

THE WITNESS: What about this?

JUDGE BIBLOWITZ: B, C, D, E. Mark right above between that F. Okay. Now just again to repeat what your testimony is, the union leafleted from D down to B?

THE WITNESS: They leafleted in B, C, D, and E.

JUDGE BIBLOWITZ: E? Okay.

BY MR. JOY:

Q. Is there any egress from the Lechmere Plaza on the south side?

A. Explain that question, please.

Q. Yes. Is there any way to cut through the Lechmere Plaza coming in from the Berlin Turnpike, and exiting out the west side?

JUDGE BIBLOWITZ: At the top of the exhibit?

MR. JOY: West would be at the top of the exhibit.

JUDGE BIBLOWITZ: Can we, for reference, put north, [178] south, east, west? Why don't you draw that? And this is south? Correct?

THE WITNESS: That would be south.

JUDGE BIBLOWITZ: So the question is is there any egress from the west side of that parking area?

THE WITNESS: No, there is no exit on the west side of the entire plaza.

BY MR. JOY:

Q. Is there any exit on the south side?

A. No, there is no exit on the south side.

JUDGE BIBLOWITZ: Not for cars at least?

THE WITNESS: No, nothing.

BY MR. JOY:

Q. Isn't there a fence funning up from west to east behind the Lechmere store?

A. Yes.

Q. Also with respect to Joint Exhibit 2, Mr. Samuelson, would you describe what, if any, barrier lies in front of the plaza stores?

A. There is a strip — I'm not sure what you'd want to call it — it appears on the map as being a very small long horseshoe. That is a curbed barrier that has grass and trees and shrubs and so forth planted in them.

JUDGE BIBLOWITZ: Right between E and F?

THE WITNESS: Right between E and F. Yes.

[179] BY MR. JOY:

Q. Mr. Samuelson, did the United Food and Commercial Workers Union ever make a request to you for the list of names and addresses of the employees at the Newington store?

A. No, they did not.

Q. To your knowledge, did they ever make any such request to any management representative of Lechmere?

A. No, they did not.

Q. Are you familiar with the geographical concentration of — strike that.

Are you familiar with where your employees reside geographically?

A. Yes.

Q. And how are you familiar with that?

A. Through our personnel records.

Q. Now can you tell me where the largest percentage of your employees reside?

A. It's made up of three basic towns: The town of Newington, New Britain and Hartford.

Q. Can you tell us how many of your employees reside in those three towns?

A. 179 out of 201, which is about 90 percent.

JUDGE BIBLOWITZ: Is this since the time you opened, or just in June or July?

[180] THE WITNESS: In the June and July period. Those figures are relatively accurate today also.

* * *

[182] BY MR. JOY:

Q. Now, Mr. Samuelson, do you know if in Connecticut names and addresses can be obtained from the Division of Motor Vehicles by using the license plate number?

A. Yes, that's correct.

Q. Tell me how you know that?

MR. MEIKLEJOHN: I'm going to object, Your Honor. I mean this is not a matter in dispute. It's cumulative.

JUDGE BIBLOWITZ: It's true. It's been admitted, and it's been admitted that the union obtained the names and addresses that way. So you're going to get something that may be irrelevant.

MR. JOY: I want to supplement the testimony that was [183] given already in this case, Your Honor.

JUDGE BIBLOWITZ: Well, it's been admitted that the union used this procedure, and I know now that in Connecticut you can obtain names and addresses from the Motor Vehicle Bureau.

MR. JOY: And I believe this gentleman's testimony will show just how easy that is to do, in a matter of minutes.

JUDGE BIBLOWITZ: It doesn't really matter. The union admitted they did it. Whether it took them ten hours or five minutes I don't think is relevant. So let's move on.

MR. JOY: Your Honor, just as an offer of proof. If allowed to testify Mr. Samuelson will testify that he went to the Division of Motor Vehicles in Wethersfield, Connecticut, which is the town next door to Newington, that he submitted a list of license plate numbers and he received within a matter of ten to twelve minutes the names and addresses of those people, and returned to his place of employment shortly thereafter.

BY MR. JOY:

Q. Okay, Mr. Samuelson, did the store receive any complaints from employees about the newspaper advertisements?

A. Yes.

Q. Can you tell me roughly how many?

[184] A. A couple of dozen.

Q. Did the store receive any complaints from employees about receiving literature at home?

A. Yes.

MR. MEIKLEJOHN: I would object, Your Honor, to the form of the question. The store receiving complaints.

JUDGE BIBLOWITZ: Overruled.

BY MR. JOY:

Q. Did Lechmere receive any complaints from employees about receiving union literature at home through the mail?

A. Yes.

Q. How many?

A. A couple of dozen.

Q. To your knowledge, did the store, did Lechmere receive any complaints from employees about home visits and telephone calls from the union?

A. Yes, it did.

Q. And, again, can you tell me roughly how many?

A. About a dozen from home visits.

Q. Can you tell me what the nature of the complaints generally were?

MR. MEIKLEJOHN: I'm going to object. First on the grounds of relevance, and second, on the grounds that there is no foundation that [he] knows the substance of these complaints.

[185] JUDGE BIBLOWITZ: My problem is relevance. You know, I assume you wouldn't argue that the union has no right to contact people at home?

MR. JOY: No.

JUDGE BIBLOWITZ: What difference does it make if these people complained, you know, or were thrilled to have

the visits. I don't see what the relevance is. What's the relevance? I can more understand testimony regarding if employees complained about the handbills at the store, or anything like that.

Visits at home, the union has a right, I assume, to do that. What difference does it make if the employees were happy or unhappy about it?

MR. JOY: I'm not contesting the right of the union to do that, Your Honor. The relevancy is that it establishes that the message was received by the employees, in terms of the issue of a reasonable alternative means of communication.

There was a suggestion, I thought an inference, that Ms. Meucci was trying to make in her testimony, that the stuff was sent out, but there was no indication that it ever was received. And this evidence tends to indicate that the information was received, and it's just that there was no interest.

JUDGE BIBLOWITZ: Let's leave it at the mailings. [186] That's the issue that Ms. Meucci brought up, about the mailings. If you want to ask about the mailings go ahead.

MR. JOY: She also indicated that telephone calls were intercepted by parents in some instances.

JUDGE BIBLOWITZ: I'll sustain the objection to that.

BY MR. JOY:

Q. Now, Mr. Samuelson, I will ask you to focus your attention on the events of June 18, 1987.

MR. JOY: Your Honor, at this time I intend to inquire with Mr. Samuelson into the events which occurred on June 18, 1987, which will call for testimony that union representatives were inside the store, where they were inside the store, what they were doing and so forth.

In light of the colloquy yesterday I want to advise Your Honor and both counsel that that is my intention, and I assume that the same objection as yesterday will be lodged.

I would like to supplement my offer of proof somewhat, but if I may proceed, I will await counsel's objection following my question.

MR. MEIKLEJOHN: If you want, I am prepared to stipulate that you will ask him about the events that occurred in the store, and we'll stipulate that on the record, and the record will reflect that I raised an objection.

[187] If you feel you must ask the questions, I suppose you have the right.

JUDGE BIBLOWITZ: Just ask the question, then he'll object, then I'll make a ruling.

BY MR. JOY:

Q. Mr. Samuelson, do you recall events that took place on June 18, 1987, at the Lechmere Newington store?

A. Yes.

Q. Can you tell me what you first recall about events happening on that day?

A. The first event happened about 10:00 A.M. in the morning, where union representatives came onto Lechmere property, had entered the store.

MEIKLEJOHN: Object.

JUDGE BIBLOWITZ: Sustained. Let's leave it headed to the store. That you agree happened. You can use that as background. But after that I don't see the relevance.

MR. JOY: Your Honor, if allowed to testify Mr. Samuelson would testify that at around 10:00 A.M. on 6/18/87 five union representatives entered the store to handbill, and did so. One even went into the warehouse area, which was clearly marked "associates only". I have a photograph showing the entrance to the warehouse, which I would offer as an exhibit through the testimony of [188] Mr. Samuelson.

These five representatives were advised of the no solicitation policy, and were asked to leave Lechmere property. They returned, some of them, at 2:00 P.M. that day, Mr. Samuelson would testify. They came back inside the store, and they were asked to leave again some four or five times.

A Mr. James Phaiah was one of them. He ignored the request to leave, and indicated by facial expression that he was disregarding it. He had a smile on his face, Mr. Samuelson will

so testify, and eventually were — and eventually did leave the store.

So if allowed to testify that would be Mr. Samuelson's testimony.

JUDGE BIBLOWITZ: Okay, let's go on.

BY MR. JOY:

Q. Were there events which took place on June 20, 1987, at the Lechmere Newington store?

A. Yes, there were.

Q. Can you tell me what, to the best of your recollection, you recall about June 20, 1987?

A. At about 9:22 in the morning a late model Oldsmobile with Florida license plates had pulled into the parking lot area. Two union representatives got out of the car and began putting leaflets on windshields.

[189] Q. What happened after that, to your knowledge?

A. I went out there, quoted our no solicitation policy to them, and they immediately left, and were seen driving into the Grossman's parking lot and parked their car next door.

Q. At 9:22 were they clearly in the Lechmere parking lot?

A. No question about it. Yes.

Q. And they were putting handbills on the windshields of automobiles?

A. That's correct. And the cars were in the parking area.

Q. Could you identify the individuals who were engaging in that activity at 9:22 that morning?

A. Yes. They were both here yesterday: Mark Espinosa, if it's the correct pronunciation, and Joe Gagnon.

Q. They were asked to leave, were they not?

A. Yes, that's correct.

Q. And they did leave?

A. And they did.

Q. And they went over to the Grossman's parking lot?

A. That's correct.

Q. And did they return?

A. Minutes later. Yes.

Q. Roughly how many minutes later?

[190] A. 9:22 to 9:47, approximately 20 minutes.

Q. Did they return in car or on foot?

A. They returned on foot from the Grossman's area.

Q. And what happened when they returned on foot?

A. Steve Mittler was the first person to meet them in the parking lot. I was then called in as Steve was talking to the individuals out in the dog leg of the grassy area. I had just come out the parcel pick up door, with full intention to go up to them, and again state our no solicitation policy.

Q. When you first sighted them where were they?

A. They were in the dog leg, which is marked grass. If you'd like I can put a letter on it.

JUDGE BIBLOWITZ: Right just about the A, that middle area?

THE WITNESS: It is west of the A by about a hundred feet.

BY MR. JOY:

Q. Is that area Lechmere property?

A. Yes, it is.

Q. And what happened after that?

A. At that point I had seen that they were ignoring my request to leave Lechmere property. We had, of course, called the police at that point. I had, in talking about the no solicitation policy to them again, they began to ask [191] me: "Well, where is your property line? Where is the line?" One of them even stepped out onto the Berlin Turnpike, and said: "You also own the Berlin Turnpike?" I said: "Of course not." At no time did I actually say: "Here is our line" or "there it is".

At that time Police Officers Gallagher and I forget the other officer's name, it starts with a C, pulled up. They had parked alongside the same grassy area that I had identified as being on Lechmere property.

Q. Let me stop you here. On which side of that grass area?

A. There were two squad cars. One was like towards the bottom, one was on the inside.

JUDGE BIBLOWITZ: And that's where it says employee side of the grass area?

THE WITNESS: Yes.

BY MR. JOY:

Q. So one squad car was parked on the west side of what you referred to as the dog leg?

A. Yes.

Q. And the other squad car was parked inside the parking lot to the north of what you've described as the dog leg?

A. That's correct.

Q. Would you continue, please? What happened after that?

[192] A. The police officers had first come to me and asked, you know, "what is the problem? Why did you call?" I said basically: "These people are trespassing on Lechmere property, and I would like them to leave our property."

Q. And what did the officer say to you?

A. The officer said he would go and talk to them. That obviously there was a public area up near the highway, and if I would wait back here he would go and discuss the issue with them.

Q. And did you wait back?

A. Yes, I did.

Q. And did you observe him going up and speaking with the union representatives?

A. Yes, I did.

Q. And at some point in time did he return to speak to you?

A. Yes, that's correct.

Q. What, if anything, did he say at that time?

A. He had told me that he advised them that they had the freedom to be in the public area, but he did tell them to stay off of Lechmere property.

Q. And what did you do, if anything, at that point?

A. I was happy with that solution, because that was my intention, to keep them off of Lechmere property, and had full knowledge that they had the right to be on the public [193] way.

Q. Did you leave at that point?

A. At that point I left, the police officers left, the union representatives stayed for five or ten minutes, and then they ultimately left.

Q. When you spoke with the police officer at any time did you raise your voice?

A. No.

Q. Mr. Samuelson, during the course of the latter part of June and July, was literature found inside the store?

A. Many times. Yes.

Q. And was it also found inside merchandise?

MR. MEIKLEJOHN: Objection.

JUDGE BIBLOWITZ: Sustained.

MR. JOY: Your Honor, if allowed to testify, he would testify that union literature was stuffed inside merchandise boxes.

JUDGE BIBLOWITZ: Let's make clear, one reason why I am sustaining these objections. I assume that the employer's position here is that even if the union had not been, in the first thing in the morning, had gone into the store and solicited in the store and stuffed handbills in merchandise or gone into the warehouse, the employer would still have restricted the union as it did.

I mean, the fact that they were in the store did not [194] make — was not the deciding factor in the employer's decision to bar the union for engaging in certain activity.

MR. JOY: The relevance of this, Your Honor, as I pointed out, was twofold. It will bear on the reasoning behind the mounting of the roof camera, as well as the issue of the factor articulated in Fairmont Hotels, that sometimes the manner in which the right is exercised bears on whether the Section 7 right counterweights [outweighs] the property right.

BY MR. JOY:

Q. We have a stipulation in the record that says picketing began by the union on August 7, 1987. Do you happen to know what the picket signs said?

MR. MEIKLEJOHN: I would object, Your Honor.

JUDGE BIBLOWITZ: Sustained.

MR. JOY: If allowed to testify, Mr. Samuelson that the picket signs said: "Don't shop at Lechmere, non-union store. This is to advise the public that Lechmere does not have a contract with the United Food and Commercial Workers Union Local 919, etc".

JUDGE BIBLOWITZ: Okay, let's move on.

MR. JOY: Your Honor, at this time I'd like to request an additional stipulation, that the union in this case does not represent, and has not represented, any of the employees at Lechmere as collective bargaining representative.

[195] JUDGE BIBLOWITZ: You don't have any trouble with that?

MR. MEIKLEJOHN: No. We'd stipulate to that.

MS. COLLINS: No problem, Your Honor.

JUDGE BIBLOWITZ: Okay, stipulation received.

* * *

[199] *Cross Examination*

BY MR. MEIKLEJOHN:

Q. You testified that on June 20th of 1987 the union representatives arrived in the parking lot at 9:22 A.M?

[200] A. That's correct.

* * *

[205] Q. Mr. Samuelson, you testified about a sort of jagged diagonal line across the property, that divides your property from Conover's [Konover's] property?

A. Yes, that's correct.

Q. If I went onto the premises and I'm standing there, would I see any line or any indication of where that demarcation is?

A. No.

Q. So a customer, or anyone else who comes onto the property, had no idea whether he's on Conover [Konover] property or Lechmere property?

A. That's correct.

Q. Now you testified about various incidents of solicitation that occurred?

[206] JUDGE BIBLOWITZ: Or attempted.

Q. Or attempted solicitation that occurred dating back to November of —

JUDGE BIBLOWITZ: 1986.

MR. MEIKLEJOHN: Thank you, Your Honor.

A. Yes.

Q. Where on the property did that — the Salvation Army, was that the first one?

A. No, the first one was the AAA.

Q. Did they distribute throughout the entire parking lot?

A. Yes, they did.

Q. Which of the satellite stores were open at that time?

A. In November of 1986, when we opened, none.

Q. Burger King also supposedly put those leaflets on the cars. Did you — were any of the satellite stores open at that time?

A. In February? No.

Q. When did the satellite stores start to open?

A. In the spring of 1987, March/April period.

Q. There were four that were open in June of 1987?

A. That is correct.

Q. How about in April of 1987, were those four open at that point?

A. In April of 1987, I'm not sure. I'd have to check that.

[207] Q. Were some of the stores open at that time?

A. In April? They could have been.

Q. When this solicitation occurred on June 18th, do you know who initiated the contact with Conover [Konover]? Was that you or somebody else from your company?

A. The contact at Conover [Konover] was probably made by someone else.

Q. It was not initiated by you?

A. No.

Q. No one from Conover [Konover] called you?

A. No, that's correct.

Q. How long have you worked for Lechmere? Not just at this store.

A. Six years.

Q. And you worked at other stores in the past, I take it?

A. Yes, that's correct.

Q. Was the rule, the no solicitation rule in effect at the time you started working for Lechmere?

MR. JOY: Objection.

A. Yes.

JUDGE BIBLOWITZ: Overruled. The same one, or any no solicitation rule?

MR. MEIKLEJOHN: Well, I guess we do have a stipulation to exactly what.

[208] BY MR. MEIKLEJOHN:

Q. In substance it was in effect when you started working there? There had been a change in the word employee to associate.

A. That was in 1986. Yes. In 1982, as a matter of fact I had started in March of 1982. The no solicitation policy was in effect, and was later revised in 1986, as stipulated.

Q. Now were you involved in formulating that policy?

A. No, I was not.

Q. Did you have any input into it? Were you consulted with respect to its contents?

A. No, but when I had joined the company the policy was already in place.

Q. Who enforced it — I'm sorry.

A. The consultation of just changing the term associates to employees. No, I was not asked my opinion on that.

Q. When you first started working for Lechmere did someone inform you of that rule?

A. It was part of my responsibility to read the company policies and procedures, to become familiar with them, so that I could exercise my duties.

Q. Is that the same employee handbook that you —

A. That's a piece of it. Yes.

Q. There's other documents you referred to?

A. How to open the store with the computers. Yes, many [209] things.

Q. You had to read a lot of stuff in order to work for this company?

A. That's correct.

Q. Did one of those documents tell you what the purpose of the no solicitation rules were?

A. Yes. As I recall, yes, the no solicitation policy itself indicates that.

Q. Indicates the purposes? Let me ask you, before we get to that, were there any other documents that told you what the purpose of the rule was?

A. No, not that I can recall.

Q. Now let me show you a copy of Respondent's Exhibit 4, and ask you what there is in that that tells you what the purpose of the rule is?

JUDGE BIBLOWITZ: Take your time and read it over, and see if there's, to your mind, that it describes the purpose of the rule.

A. Okay. No, I don't believe this indicates the purpose of the rule.

Q. Can you think where it was that you learned what the purpose of the rule was?

A. It was in a previous assignment in a different store that I had learned that.

Q. Did somebody tell you what it was, or was it something [210] you read?

A. Well, during my first thirty days I was given an orientation in another store, with another store manager, where we covered policies, procedures and so forth. And in all probability, that was covered with me in March of 1982.

Q. Can you remember him telling you that one of the purposes of the rule was to keep out illegal trespassers?

A. You're asking for recognition going back many, many years. It's difficult. During that orientation I was exposed to many such policies, and probably very easily could have been exposed to the purpose of the no solicitation policy. I could not give you exact dates or whom by.

Q. Well, you have it in your mind at this time what the purpose of the policy is? Correct?

A. Yes.

Q. Is that as a result of something somebody told you more recently since you took over the Lechmere store?

A. No, definitely not. That was fairly clear in my mind going back to 1982.

Q. Now one of the purposes was to keep out illegal trespassers?

A. That's correct.

Q. You don't remember who told you that that was one of the purposes?

[211] A. No, I don't recall who told me that.

Q. To you, who would be an illegal trespasser? Is that somebody who is committing a violation of the law, by stealing —

MR. JOY: Objection, Your Honor. Hypothetical question.

JUDGE BIBLOWITZ: Overruled.

Who would be illegal trespassers? Is that the term?

MR. MEIKLEJOHN: Yes.

JUDGE BIBLOWITZ: Who would be, in your mind?

THE WITNESS: In my mind, it would be anyone that would be coming to the store not for the purpose of shopping, but for the purpose of distributing literature, raising funds for a church, a bake sale, many of those factors.

BY MR. MEIKLEJOHN:

Q. So the first purpose basically of the no solicitation rule is to keep solicitors out? Correct?

A. That's correct.

Q. Now the second reason you listed was to prevent the harassment of customers?

A. That's correct.

Q. Do you recall who told you that that was one of the purposes of the rule?

A. Again, specifically no, but I had a very clear understanding of that, because I myself as a shopper object [212] to walking in a store and have people shaking cans in your face. I don't like that.

Q. So, in your mind, harassment would be somebody thrusting things at you, handing you things?

A. Asking to buy raffle tickets, or cookies, or candies, or buy T shirts for the cub scouts, whatever that may be. Yes.

Q. It's in the nature of —

A. Nuisance.

Q. ... verbal nuisances? That type of thing?

A. Verbal nuisances. Yes.

Q. Now the third purpose is to prevent confrontation? Is that correct?

A. That's correct.

Q. Now when you speak of a confrontation, that again would be a face to face situation, where somebody is asking a customer to give them something, to buy something, or to take something the customer doesn't want?

A. That's correct.

Q. And that can result in an argument?

A. An argument, an act of violence. Yes. Even damage to someone's car.

Q. Now can you recall — can you think, at this time, of any other purpose for which this rule is listed?

MR. JOY: Objection, Your Honor. He's testified to [213] other purposes on this direct.

JUDGE BIBLOWITZ: Then he can tell us. Overruled.
BY MR. MEIKLEJOHN:

Q. Any other purposes for which the rule exists, other than the ones you've just told us about?

A. No, generally that's it.

Q. Let me ask you one more question. When you were first told about the no solicitation rule, were you told that one of the reasons for the rule was to keep union solicitors off the premises?

A. No.

Q. It's true, is it not, that it is the position of Lechmere that it prefers that its employees not be represented by a union? Is that correct?

MR. JOY: Objection.

JUDGE BIBLOWITZ: Overruled.

A. We're not against unions. We're pro-associates.

JUDGE BIBLOWITZ: Is it true or is it not? Repeat the question, if you wish.

BY MR. MEIKLEJOHN:

Q. Is it true that Lechmere prefers that its employees not be represented by a labor organization?

MR. JOY: Objection. Asked and answered.

JUDGE BIBLOWITZ: Overruled. No, it hasn't. Is that true, that Lechmere prefers that its employees or [214] associates not be represented by a labor organization?

THE WITNESS: Probably.

JUDGE BIBLOWITZ: Probably true. Okay.

BY MR. MEIKLEJOHN:

Q. Did you on July 1st, do you recall on July 1st, sending a letter? July 1st of 1987? Sending a letter to Lechmere Associates, in which you stated: "We place great value on having the ability to communicate and deal directly with you, something that typically does not occur if there is a third party, such as a union, involved"?

MR. JOY: Objection.

JUDGE BIBLOWITZ: Overruled. Did you write a letter to that effect?

THE WITNESS: I recall a letter. Yes.

BY MR. MEIKLEJOHN:

Q. Do you recall a letter that stated that in substance?

A. In substance. Yes.

MR. JOY: Your Honor, I object. I think he's entitled to see the entire letter.

JUDGE BIBLOWITZ: I agree. This isn't a memory test. If you want to show it to him. You don't have to have it marked. Just show it to him.

Off the record.

(Off the record to examine document)

JUDGE BIBLOWITZ: Do you want to show the witness what [215] you're referring to?

BY MR. MEIKLEJOHN:

Q. I'll just show you this document, and ask if that refreshes your recollection that you sent a letter to employees stating what I previously suggested?

A. Yes, I did.

Q. My only other question to you is does that, in fact, reflect Lechmere policy?

A. Yes.

Q. Now you had an opportunity to read the literature which the union was placing on employee cars?

A. Yes, that's correct.

Q. Is it fair to state that it was your understanding of the literature that it was designed to convince the employees that they would be better off being represented by a labor organization?

MR. JOY: Your Honor, I'm going to object. I don't understand what the relevance of this examination is. We have three specific allegations contained in this complaint. One relates to the incident on June 20th, one relates to the mounting of a video camera, and one relates to the general proposition of access to the parking lot. I don't see what this line of inquiry serves to advance the relevant cause of either one of those three issues.

JUDGE BIBLOWITZ: Mr. Meiklejohn?

[216] MR. MEIKLEJOHN: Very briefly, the purpose goes to the purpose — I believe the question goes to the purposes —

I believe the question I went through, the purpose of the no solicitation rule, the purpose for which it was enforced in this particular case.

MR. JOY: Your Honor, the testimony has been that it has been uniformly enforced, against the Girl Scouts, Salvation Army, etc.

JUDGE BIBLOWITZ: But. Mr. Meiklejohn is entitled to cross examine your witnesses to establish whether it actually has been, just as you are entitled to cross examine his witnesses. I'll allow a little bit of leeway in this. Overruled. Don't get too deeply into this.

MR. MEIKLEJOHN: I won't.

BY MR. MEIKLEJOHN:

Q. Do you remember what the last question was?

A. No, I, frankly, don't.

Q. Did you recognize that the purpose of the leaflets were to convince employees that they would be better off being represented by a union?

MR. JOY: Objection, Your Honor. Beyond the scope of direct examination.

JUDGE BIBLOWITZ: Overruled. Did you recognize that as the purpose of the leaflet?

THE WITNESS: Which leaflet? I mean there were many. [217] There seemed to be many different directions that I recall on some of the leaflets. I recall one dealing with benefit issues. I recall, and perhaps I might be a little cloudy on some of the advertisements; which leaflets are you referring to?

JUDGE BIBLOWITZ: Do you want to ask in general, the nature of the leaflets in general, or specific ones?

BY MR. MEIKLEJOHN:

Q. I'll show you —

MR. JOY: At the risk of interrupting one more time, and it will be my last time. I would like to raise a continuing objection to this line of inquiry, inasmuch as counsel for the general counsel had called this witness as a 6(11)(c) witness in this case earlier.

I have not gone into this subject on my direct examination. The federal rules of evidence limit the scope of cross to that which was examined on direct. So I'm not going to interrupt as we go along, but I would appreciate an agreement that I have a continuing objection to this line of inquiry.

JUDGE BIBLOWITZ: I understand that. My problem is more relevance. I think we're just getting into an area that is really not going to serve much purpose.

That's in evidence. I can look at it, and certainly make a determination as to the purpose of the document. But [218] if you want to ask briefly, go right ahead.

MR. MEIKLEJOHN: This has all been on one question so far.

JUDGE BIBLOWITZ: Show it to him.

BY MR. MEIKLEJOHN:

Q. I'll show you General Counsel's 3, for example, and ask you by reading that, if you recognize that the purpose of that was to convince employees to join the union?

A. This seems to be convincing [convincing] the employee that there are no threats allowed, you've got a right to organize, don't be vague about threats, write down what was said.

So, as I earlier said, there was another brochure that had dealt with benefits. So, to answer your question, in terms of this leaflet, I don't think this is saying to the associates "This is why you should join the union."

MR. JOY: There's another side to that.

JUDGE BIBLOWITZ: See on the other side.

THE WITNESS: The other side, I guess basically, would be an invitation to join the union.

BY MR. MEIKLEJOHN:

Q. And the first side, would it be fair to say essentially don't be afraid to join the union?

MR. JOY: Objection, Your Honor. The document speaks for itself.

MR. MEIKLEJOHN: I'll withdraw the question.

[219] JUDGE BIBLOWITZ: Let's move on.

MR. MEIKLEJOHN: I'll try just one more time to ask the question.

BY MR. MEIKLEJOHN:

Q. Did you recognize that the overall thrust of the leaflets that were being given to the employees or the associates, was to convince them that they should join the union?

MR. JOY: Objection.

JUDGE BIBLOWITZ: Overruled. Was that the overall thrust of all the leaflets that you saw?

THE WITNESS: It seemed to be. Yes.

BY MR. MEIKLEJOHN:

Q. And you would prefer, you testified, that the employees not select a union to represent them? Correct?

A. Yes.

Q. Is it fair to say that by keeping those leaflets out of employees' hands they would — keeping the union's leaflets out of the employees' hands, they would be less likely to decide to join a union?

MR. JOY: Objection.

JUDGE BIBLOWITZ: Sustained.

BY MR. MEIKLEJOHN:

Q. I'll ask the next question. Was that one of the [220] reasons why you tried to keep the leaflets out of the employees' hands, so that they would be less likely to decide to be represented by the union?

MR. JOY: Again, I object. This was not something —

JUDGE BIBLOWITZ: Overruled. Was that one of the reasons?

THE WITNESS: It's very difficult to answer. I think my primary reason was to continue the consistent enforcement of the no solicitation policy.

And while that particular instance that you're talking about, yes, that would keep literature from some of the associates.

BY MR. MEIKLEJOHN:

Q. And that was not the primary purpose, but was one of the purposes? Is that what you're saying?

A. The primary purpose was the no solicitation policy enforcement.

Q. This was a secondary purpose then?

A. Harrassment of our associates.

Q. Does Lechmere receive copies of the Hartford Courant at the premises of the store?

A. Yes, we do.

Q. Did you yourself remove campaign advertisements from the copies of the newspapers which you received at the store?

A. Yes, I did, along with competitive ads, as is the [221] practice for having the subscriptions.

Q. You testified about complaints which you received from customers about the leaflets in the parking lot?

A. Yes.

Q. Did you personally receive any of those complaints?

A. I personally received a couple. Yes.

Q. Do you recall when you received those one or two complaints?

A. Date and timewise, no, I don't. But it was, of course, obviously during the activity when leaflets were on the cars, because I did have some customers come in and ask to see the store manager, and complain that they didn't like shopping when they were being harrassed with things on their windshields.

Q. Now this happened — was that on the first day when the union placed leaflets in the parking lot? Do you know?

A. No, I don't think I had any on the 18th, but after that I did.

Q. You testified that employees complained about leaflets on the cars?

A. Yes.

Q. Did those employees complain to you personally?

A. Yes, they did.

Q. Do you recall approximately how many employees complained?

[222] A. A couple of dozen.

Q. And you say they also complained about the newspaper ads?

A. Yes, they didn't like the idea of the ads themselves.

Q. How many employees complained to you personally about the newspaper ad?

A. Six or eight perhaps.

Q. Are there any signs or indications on the pay telephones that those phones are solely for the use of customers of Lechmere, and other stores in the Lechmere Plaza?

A. Very frankly, I have no idea what is on the pay phone other than dialing instructions.

Q. Have you ever looked at the phone?

A. No.

Q. Do you know who the phones belong to?

A. A.T.&T. That's a guess. The phone company.

Q. They belong to the phone company?

A. Yes.

Q. Not so simple to figure out, who the phone company is any more. But do they belong to one of the phone companies?

A. One of the phone companies.

Q. Do you know who arranged to have the phones placed in the plaza?

[223] A. Well, it would be a customer convenience. As you get people that are shopping, that may go out in the corridors.

Q. I'm afraid you're not really answering any question.

A. I'm sorry.

Q. Do you know who —

MR. JOY: There is no motion to strike as being non-responsive. He interrupted the witness's answer.

JUDGE BIBLOWITZ: Same thing. I'm not going to hold him to use magic words. Do you know who arranged for the telephones to be installed?

THE WITNESS: Probably Conover [Konover] Management, if you're talking about those two phones there. Yes, I would guess. I'm not sure.

BY MR. MEIKLEJOHN:

Q. It wasn't Lechmere then?

A. I don't know if we did or didn't. Like I said, I am guessing that maybe Conover [Konover] may have arranged that. I don't know.

Q. Does Lechmere also have some pay phones inside the lobby of the store, or in the entryway to the store?

A. Yes, we do.

Q. So those are not visible and not accessible to someone who is not a customer to Lechmere, unless he happens to know that the phones are there for some reason? Correct?

[224] A. Would you repeat that?

Q. The ones on the inside of Lechmere's, wouldn't be accessible to someone who is not a customer of Lechmere, unless they happened to be aware that those particular phones were there?

A. That's true. Yes.

Q. On the other hand, the ones in front of the plaza are not surrounded or enclosed in any fashion? Is that correct?

A. That's true. They would have access 24 hours a day, the ones inside Lechmere would be limited to store hours if someone knew they were there. Yes.

Q. You testified that the United Food and Commercial Workers never requested employee names. Does Lechmere have a policy on giving out employee names?

A. Not that I'm aware of.

Q. Do you know what you would do if United Food and Commercial Workers had asked for those names?

MR. JOY: Objection.

JUDGE BIBLOWITZ: Sustained.

BY MR. MEIKLEJOHN:

Q. You testified that I guess it's 179 out of 200 employees came from Newington, New Britain and Hartford. Do you know the approximate population of Newington?

A. I really don't. I'm sorry.

Q. Hartford is approximately 150,000? Do you know if [225] that's the right ballpark?

A. It may be. I know there's 880,000 in the region.

Q. The region being the Hartford metropolitan area?

A. Yes. Where we would be a customer base to draw on. What the specifics are of New Britain and Newington are, I'm not sure.

* * *

[229] Q. There were no incidents of pickets engaging in acts of violence? Correct?

A. That's correct.

Q. There were no incidents of pickets hurling insults or harassing customers? Correct?

A. No, that's correct, and that's why we stopped even watching them on the camera.

Q. Did you continue to keep the camera focused on them even though it wasn't recording them?

A. Focused? No. Most of the time the camera was on automatic, which means it just did a gradual sweep of the areas, as would all the cameras inside the store.

* * *

[230] Q. First, you testified that agents of the union placed handbills on cars, and then left the property when instructed to do so?

A. Around the 20th?

Q. Around the 20th.

A. That's correct.

[231] Q. And about twenty or twenty five minutes later they returned to the grass area? Correct?

A. They returned to the grass area from Grossman's. Yes.

Q. There were four of them at that point?

A. I believe so. Yes.

Q. With respect to this map, Joint Exhibit 2, this dotted line in the grass area, that represents approximately the border between public property and Lechmere property? Is that correct?

A. That's correct.

Q. So if pickets were on the grass area —

A. The June pickets.

Q. Pickets is the wrong word. I'll have to be careful. Handbillers were on the grass area on June 20th, they would have to be right next to your property, or within a few feet of your property, they were on the main grass strip — I mean, right next to your parking lot to be on your property? Correct?

MR. JOY: Objection. I'm not sure I understand the question.

JUDGE BIBLOWITZ: I didn't either.

BY MR. MEIKLEJOHN:

Q. If the handbillers were on the grass strip —

JUDGE BIBLOWITZ: Which grass strip?

MR. MEIKLEJOHN: The large grass strip which runs the [232] length of the property.

JUDGE BIBLOWITZ: All right.

BY MR. MEIKLEJOHN:

Q. They would be on public property unless they were within a few feet of your parking lot? Correct?

A. Yes, that's right.

Q. You prepared a written incident report describing the events of that date? Correct?

A. Correct.

Q. Did you prepare that on the date that it occurred?

A. Yes, I did.

Q. When you prepared that did you write — do you have a copy of it?

JUDGE BIBLOWITZ: Show the witness a copy of it, and let him read it.

A. 9:47.

Q. Yes, you wrote in describing the events at 9:47.

A. This is the second time. Yes.

Q. Did you write that you went outside and saw the four people in the grass area? Is that the way you described your observations when you first approached the people?

A. Yes.

Q. Did you make any notation on your incident report as to the fact that they were on the area which you've referred to as the driveway?

[233] MR. JOY: Your Honor, it's not clear whether we're talking about one or two incidents. And, if so, if we're talking about two, which incident we're talking about on the morning of the 20th.

JUDGE BIBLOWITZ: I think the witness said he understands that's after they returned. Is that correct? Do you understand that Mr. Meiklejohn questioned you about when they returned?

THE WITNESS: When they returned the second time that morning.

MR. JOY: Okay, I withdraw my objection.

BY MR. MEIKLEJOHN:

Q. The question is in that report did you specify, when you talked about the grass area, if you're talking about this, or the dog leg, which is perpendicular, which says grass?

A. When I walked out the pick up entrance to meet them —

Q. The question relates to the document.

A. I first saw them in the dog leg grass area here.

Q. But when you described it on your incident report?

A. I referred to the grass area. They are both grass areas.

Q. And you made no indication that they were on the — there is nothing on the report to indicate that they were in the dog leg area? Correct?

[234] A. No, that's true.

Q. And there is nothing in the report to indicate that they were, in fact, on Lechmere property? Correct?

A. That's true.

Q. Now you testified that one of the leafleters, when you approached them, asked where the property line was? Correct?

A. That is correct.

Q. Do you recall what your response to that was?

A. I did not give a specific response. I just said: "Stay off of Lechmere property."

Q. But you didn't tell him where Lechmere property ended and began?

A. I did not draw a line. No, I did not.

Q. Did you indicate which portion, if any, of the grassy strip belonged to Lechmere, and which portion belonged to the public?

A. No, I did not.

Q. Now when you approached the — when you came out to approach the leafleters, where were they standing when you got to the grass area? Where on the grass area?

A. They were moving from the dog leg grass area towards the big grass area.

Q. Well, when you got there where were they?

A. When I got there they were just about in the big grass [235] area.

Q. So when you got there you told them to get off of Lechmere property?

A. To get off of Lechmere property, because I had just seen them on it.

Q. But at that point they were off of Lechmere property? Correct?

A. Yes.

Q. And they asked you where they could go, and where they were allowed to be, and where they weren't allowed to be? Correct?

A. Right.

Q. And you didn't answer that?

A. I knew they could be in the public area.

Q. But you didn't tell them where the public area began? Correct?

A. No, I didn't feel it was my obligation to take a chalk line out there and mark it.

Q. They were on the public area at that point? Correct?

A. At that moment.

Q. And you told them to get off of your property?

A. As I had done six or seven times previously.

Q. And they were off of your property at that point? Correct?

MR. JOY: Objection. Asked and answered.

[236] JUDGE BIBLOWITZ: It's been asked and answered. BY MR. MEIKLEJOHN:

Q. So at the time you told them that you were going to call the police they were on public property? Correct?

MR. JOY: Objection. There's been no such testimony.

JUDGE BIBLOWITZ: Overruled. At the time you went to call the police.

BY MR. MEIKLEJOHN:

Q. At the time you told them you were going to call the police were they on public property?

A. The police had already been called, as I was coming out the door.

Q. So you had the police called before you approached them? Is that right?

A. Yes.

Q. Let me draw your attention once again to your incident report of June 20, 1987, seven lines from the bottom.

MR. JOY: Your Honor, pardon me for interrupting, but I provided counsel for the general counsel two incident reports.

JUDGE BIBLOWITZ: This is the one page one.

MR. JOY: One separated by 20 minutes. I'd like him to identify for the record which incident report of 6/20/87 he's referring to.

JUDGE BIBLOWITZ: This is the single page one?

[237] BY MR. MEIKLEJOHN:

Q. Let me show you a document, incident report dated June 20, 1987, 9:47 A.M., about seven lines from the bottom, and ask you to read the sentence which begins: "I then told them ..."?

A. Okay. "I then told them I would call the police if they did not leave our property."

Q. Now that was after you had come out and confronted them? Correct?

A. Yes, but the police were already called.

Q. This was after you had asked them to leave the property? Correct?

A. Correct.

Q. This is while they were on the grassy strip which you described as public property?

MR. JOY: Objection, asked and answered.

JUDGE BIBLOWITZ: Overruled. Was that while they were on the public strip, at the time you said that to them?

THE WITNESS: Yes.

BY MR. MEIKLEJOHN:

Q. Now I would ask you to read the sentence immediately after the one you just read?

A. It says: "They didn't leave so we called the police." And the next sentence is.

Q. That's fine.

[238] MR. MEIKLEJOHN: Nothing further, Your Honor.

JUDGE BIBLOWITZ: Any further cross examination from the charging party?

MS. COLLINS: No, Your Honor.

JUDGE BIBLOWITZ: Any redirect?

MR. JOY: Yes, Your Honor. If I just may have one moment?

JUDGE BIBLOWITZ: We'll take a few minutes.

(Off the record for a short break)

JUDGE BIBLOWITZ: Mr. Samuelson will now be questioned by Mr. Joy.

Redirect Examination

BY MR. JOY:

Q. Mr. Samuelson, you were asked several questions on cross examination by counsel for the general counsel, relating to a letter dated July 1, 1987, and signed by yourself. I have put a copy of that document in front of you, and ask if you see it?

A. Yes.

Q. Now I would like to ask you if you sent that letter?

A. Yes, I did.

Q. And did you send it to employees of the company?

A. That's correct.

Q. Does that letter say, in part: "We feel we have an obligation to maintain an environment free of interruption [239] and inconvenience for both our customers and our associates"?

A. That is correct.

Q. Does that letter also make reference to newspaper ads and telephone calls, and complaints by employees about telephone calls at home?

A. Yes, it does.

Q. And newspaper ads?

A. Yes.

Q. Now, in terms of the incident reports, did you fill out two incident reports for the events of the morning of June 20, 1987?

A. Yes, I did.

Q. You've been examined on one that is dated and timed 9:47 A.M? Correct?

A. That is correct.

Q. By the way did you know at the time exactly where the line of demarcation between Lechmere property and public property was, at the 9:47 incident?

A. I had a general idea.

Q. But you didn't know precisely?

A. Precisely, no.

* * *

[244] JUDGE BIBLOWITZ: Mr. Samuelson, you're excused.

While we're still on the record left over from yesterday is the subpoena that Mr. Joy had requested from me. Mr. Joy, you want to turn it over to Ms. Meucci. And then I'll see if there is anything forthcoming from general counsel in that regard. That's a subpoena for the names, I guess, she had

gotten, notes regarding the names she had gotten of the employees from the Motor Vehicle Bureau.

MR. JOY: Let me read what I said here. The subpoena calls for any documents including, but not limited to, notebooks, logs, lists of Lechmere Newington employees relating to the union's efforts to communicate with Lechmere Newington employees.

JUDGE BIBLOWITZ: Now that Ms. Meucci has received it, Mr. Meiklejohn, do you have anything to say in regard to that?

MR. MEIKLEJOHN: Are we on the record, Your Honor?

JUDGE BIBLOWITZ: Yes.

[245] MR. MEIKLEJOHN: Well, I'd like to have an opportunity to review it first. I would also like to note, although we may end up on the record on this ultimately, I remind you that the rules do provide that a subpoena first be made off the record.

There will be, I believe, a petition to revoke, and the rules do provide that subpoena rulings ordinarily be made off the record. And placed on the record only if proved necessary.

JUDGE BIBLOWITZ: Let's see how it goes. You want some time to look over the subpoena? Let's go off the record for a moment.

(Off the record to examine document).

JUDGE BIBLOWITZ: Mr. Meiklejohn, you've had an opportunity to look over the subpoena?

MR. MEIKLEJOHN: Yes. Very briefly, I would object to the (sic) petition to revoke the subpoena on the grounds that it calls for the production of documents which contained extensive irrelevant information.

It reveals the responses made by — the documents which are covered by the subpoena would reveal responses of employees who were contacted by the union, whether they were favorable, unfavorable. It would reveal which employees expressed an interest in the union, and communications which I believe the employees had a right to expect would be [246] confidential.

And which, for that reason, it would be highly prejudicial to the employees potentially, placing them at risk to having that information turned over to respondent, whereas the relevant point is the point which has been brought out already, which is that the union was able to obtain the names of a certain number of employees, what those employees said when they were contact[ed] by respondent is totally irrelevant — by the union rather, is totally irrelevant to this proceeding.

JUDGE BIBLOWITZ: Mr. Joy, what is your response to that?

MR. JOY: Your Honor, I would assert that this information is relevant to this proceeding. The witness, Ms. Meucci, testified that she had problems recalling exactly the number, and the logbook that counsel for the general counsel has in front of him would provide the exact information.

All of this information is directly relevant to the question of the reasonable alternative means of communication, and I won't repeat the reasons that I advanced yesterday when we did stop on this point, and argued it at some point in the record yesterday.

But I incorporate by reference all of the points I made at that particular time. I believe I'm entitled to that [247] information. I believe it's relevant. I believe that insofar as the concern about the confidentiality is concerned, I believe the witness's testimony was that it was only one employee who indicated any response from the mailings. So I don't know what it is that is so ultra confidential in that regard.

I'm only trying to establish through independent documentary evidence that the numbers that this witness seemed to recall, that is Ms. Meucci in her testimony, are borne out by the records that she kept.

JUDGE BIBLOWITZ [MR. MEIKLEJOHN]: Your Honor, if the purpose for which the document is being requested, perhaps there should be some sort of description into the record as to what we're talking about. It is, in fact, a logbook with a separate page for each individual, and various

information regarding that individual that the union was able to obtain contained on that page.

If respondent — I think it's perfectly legitimate that respondent is interested in verifying the number of employees, and I would have no objection to the logbook being turned over to some mutually agreeable disinterested person, to count the number of pages with employee names on them, to verify. Whether that had to be the judge, or somebody in my office who is not involved in the case, can be trusted to count the pages, to verify the numbers. I [248] certainly have no objection to that.

The information reported on the pages, which I am contending is both irrelevant and potentially prejudicial.

JUDGE BIBLOWITZ: Mr. Joy?

MR. JOY: Your Honor, it may well be that there are certain portions of it that I would want to move into the record. Although I am willing to agree to some kind of in camera inspection, I don't want to be limited to that. I don't want to state that that's my limited purpose for seeking this information.

JUDGE BIBLOWITZ: Let me say that I agree with what Mr. Meiklejohn said, regarding the names and the comments. I think that although the numbers would be relevant, the names and the comments would certainly not be — the names would be tangential, and the comments would be possibly prejudicial to the employees.

So I'll sustain Mr. Meiklejohn's petition in that regard.

Now if you wish me, or someone else, to make an in camera inspection, and give you the number of different employees listed in that book, that's fine. I agree that that's relevant, but other than that I would sustain Mr. Meiklejohn's position.

MR. JOY: I will state for the record that I will not request that the Administrative Law Judge review the [249] document for that limited purpose.

JUDGE BIBLOWITZ: Okay.

MR. MEIKLEJOHN: Does that mean that you want someone else to do it?

MR. JOY: No.

JUDGE BIBLOWITZ: Let's move on. Another witness?

MR. JOY: I do not, Your Honor. Respondent rests.

* * *

JUDGE BIBLOWITZ: Back on the record.

Mr. Meiklejohn, I assume that there will be rebuttal, since you said there will?

MR. MEIKLEJOHN: Yes.

* * *

[250] JUDGE BIBLOWITZ: Ms. Meucci, you want to take the stand? You've been previously sworn. We don't have to do that even though it's a different day, it's the same person. There will be one question from Mr. Meiklejohn.

Mr. Meiklejohn?

Direct Examination

BY MR. MEIKLEJOHN:

Q. On June 20th, when you went to the Lechmere Plaza to handbill next to the entrance, did you go onto the grassy area which has been labeled the dog leg at all?

A. No, not the dog leg.

MR. MEIKLEJOHN: That's all.

JUDGE BIBLOWITZ: Anything?

MR. JOY: Yes, Your Honor.

Cross Examination

BY MR. JOY:

Q. That same morning, June 20th, Ms. Meucci, when you first appeared on Lechmere property, was that prior to going over to the Grossman's parking lot?

A. No.

Q. Isn't it true that you were on the Lechmere property, were asked to leave, went over to the Grossman's parking lot, and then came back and were visited as you just sited yourself?

A. No.

[251] Q. Do you know if others in your group, representatives of the union had, prior to meeting in Grossman's parking lot that morning, had been inside Lechmere's property?

A. No. I met everybody in the Bradlee's parking lot across from Lechmere.

Q. Yes, and then you came over to Lechmere?

A. Then I got in my car and drove around, and drove my car to Grossman's parking lot.

Q. And where were the others that you had met at Bradlee's parking lot?

A. In Bradlee's. We all met there.

Q. Yes, and where did they go?

A. Two cars went over to Grossman's, and we walked from Grossman's up the grassy knoll to Lechmere.

Q. Do you know if the people in the other car had been on Lechmere property that morning?

A. No. By the time I had arrived they were sitting in their car at Bradlee's —

JUDGE BIBLOWITZ: So you don't know?

THE WITNESS: No, I don't.

MR. JOY: I have no further questions.

JUDGE BIBLOWITZ: Thank you, Ms. Meucci. Next rebuttal witness?

MR. MEIKLEJOHN: General counsel recalls Giovanni Cassarino.

[252] JUDGE BIBLOWITZ: Mr. Cassarino? Mr. Cassarino, you are also still under oath, since you were sworn in yesterday. Mr. Meiklejohn?

Direct Examination

BY MR. MEIKLEJOHN:

Q. On June 20th you went to Lechmere's Plaza to distribute leaflets at the entrance. Did you, or anyone in your group, go onto the dog leg grassy area?

A. No, we didn't.

MR. MEIKLEJOHN: That's all.

Cross Examination

BY MR. JOY:

Q. How far away were you from the police cruiser?

A. I was not close at all to the police cruiser. I was close to the curb on the highway.

Q. How far away were you from the police cruiser?

A. The police cruiser was parked over there. About 25 to 30 feet away from me.

JUDGE BIBLOWITZ: And the police cruiser was parked where? Can you show us on the map?

THE WITNESS: Probably along here.

JUDGE BIBLOWITZ: Right where the E and the M are, where it says employee.

BY MR. JOY:

Q. Mr. Cassarino, did you meet in the Grossman's parking [253] lot, the rest of the people?

A. No, we met in the Bradlee's parking lot, the four of us. Then we took two cars and we went across the street to the Grossman's parking lot. One guy crossed the highway to get to the other side.

Q. Okay, so you drove in one of the cars?

A. Yes, I was with another guy.

Q. Let me finish my question. You drove from Bradlee's in one of the automobiles?

A. Yes.

Q. And where did you first go?

A. To the Grossman's parking lot.

Q. You didn't stop and go on the Lechmere property first?

A. Not at all.

Q. At you been on the Lechmere property at any time that morning?

A. No.

Q. When you met in the Grossman's parking lot, do you know if any of the people you met there had, prior to that time, that day, been leafleting on the Lechmere parking lot?

A. Not at all. I don't know that.

Q. You don't know that?

A. No.

Q. Did you talk to them?

[254] A. No.

Q. Was there any conversation about some of them having just come from the Lechmere parking lot, and being asked to leave because they were leafleting in the parking lot?

A. No.

Q. You don't recall that?

A. Not at all. Nobody ever told me about that.

Q. And you are telling me under oath that you have no knowledge as to whether any of the people — let me have a moment, I'll get the names.

JUDGE BIBLOWITZ: I think he's testified to that twice already, that he doesn't know. That no one ever said that to him.

BY MR. JOY:

Q. So it's your testimony that at 9:20 A.M. on 6/20/87 you were not in the Lechmere parking lot leafleting cars?

MR. MEIKLEJOHN: Objection.

A. I was not.

Q. And do you know if Joseph Gagnon was?

A. I don't know.

Q. How about Mark Espinosa?

A. I don't think so, because I think Mark came after. He met us in the parking lot.

MR. JOY: No further questions.

JUDGE BIBLOWITZ: Thank you. Again, Mr. Cassarino, you [255] are excused.

That's it for rebuttal?

MR. MEIKLEJOHN: That's it, Your Honor.

* * *

JOINT EXHIBIT NO. 1

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SUBREGION 39

LECHMERE, INC.
and
LOCAL 919, UNITED FOOD AND COMMERCIAL WORKERS,
AFL-CIO

STIPULATION OF FACTS

1. LECHMERE, INC. is an employer engaged in the sale of retail goods.
2. During the 12-month period ending August 31, 1987, Lechmere in the course of its business operations derived gross income in excess of \$500,000 and is now and at all times material engaged in commerce within the meaning of the Act.
3. Lechmere, Inc. opened a retail store in Newington, Connecticut in November, 1986 located on the Berlin Turnpike. The store is located on a parcel of land bounded on the east by the Berlin Turnpike and on the north by Pascone Street. The parcel measures approximately 880 feet from north to south and 740 feet from east to west. The Lechmere store is located at the south end of the property. A main parking lot is to the north of the store and extends to Pascone Street. A smaller parking lot is located to the east of the store. A strip of 13 smaller "satellite stores" runs along the west side of the parcel facing the parking lot. As of June 1987, only about 4 of these stores were occupied. These stores are not owned by Lechmere, and are approximately 100 feet from the Lechmere store at the nearest point. There are two public pay telephones located in front of the satellite stores. Ownership of the parcel of land is divided among Lechmere and Newington Commer-

cial Associates Limited Partnership. Lechmere owns the land occupied by and immediately surrounding its store. Newington Commercial owns the satellite stores. The remainder of the parking lot is jointly owned by Lechmere and Newington Commercial. Konover Management Corporation, a general partner in Newington Commercial Associates, has management responsibility for the satellite stores. Lechmere obtained a letter from Konover dated June 26, 1987 authorizing Lechmere to use "reasonable, lawful means to prevent distribution of hand bills, flyers, etc. within the shopping center." A grassy strip approximately 46 feet wide runs the entire length of the property along the Berlin Turnpike, with the exception of 2 breaks in that strip for entrance to the parcel. The 42 foot width of that grassy strip along the Berlin turnpike is public property. The remainder of the grassy strip is Lechmere's property.

4. Access to the parcel of land may be had through the main entrance off the Berlin Turnpike. That entrance opens directly onto a roadway which passes the front of the Lechmere store. The main set of doors to the store is on the north side of the building facing that roadway and the main parking lot. A set of doors to the east side of the store faces the smaller parking lot. This set of doors is identified as package pickup. There are also entrances to the parcel of land from Pascone Street entering the main parking lot, and from the Berlin Turnpike at the rear of the Lechmere store. Joint Exhibit 2 is a diagram of the parcel of land on which the Lechmere Newington store is located.

5. There is a sign at the main entrance to the parcel of land which identifies two of the stores on the parcel, "Lechmere" and "Card Gallery." There are no signs in the parking lot announcing any restrictions on access to or use of the parking lots other than signs identifying certain parking spaces as "Handicapped Parking." There are two 6" by 8" signs on each set of doors to the Lechmere store which reads, "TO THE PUBLIC."

No Soliciting, Canvassing, Distribution of Literature or Trespassing by Non-Employees in or on Premises."

6. The Berlin Turnpike is a 4-lane divided highway which runs from Wethersfield, Connecticut to Meriden, Connecticut, a distance of approximately 15 miles. The speed limit on the Berlin Turnpike outside the parcel of land in question is 50 M.P.H.

7. Lechmere, Inc. established a No Solicitation/No Distribution policy in 1982.

8. The policy was amended in March, 1986 to change the word "employee" to "associate" and to put it into the format of standard operating procedures.

9. The contents of the policy are attached hereto as Joint Exhibit 3.

10. The policy was in effect at all times material herein.

11. As of June 1987, Lechmere employed approximately 200 employees at the Newington store.

12. The charging party placed full page and quarter page advertisements in the Hartford Courant on June 16, 26, 29, 1987, July 2, 1987, and August 3, 1987 and in the New Britain Herald on July 9, 1987 aimed at Lechmere employees. (Copies are attached as Joint Exhibit 4A-F).

13. The charging party placed full or quarter-page advertisements in the Hartford Courant aimed at the general public on August 17 and 25 and September 2, 7, and 17, 1987. (Copies are attached as Joint Exhibit 5A-F).

14. Representatives of the charging party picketed on the grass area between Lechmere's parking lot and the Berlin Turnpike as follows:

- a. August 7-31, 1987
- b. September 1-5, 1987
- c. October, 1987 — once a week
- d. November, 1987 — once a week
- e. December, 1987 — once a week
- f. January, 1988 — 6 times

g. February, 1988 — 5 times

h. March, 1988 — 2 times

15. Representatives of the Charging Party were never asked to leave the grass area on which they picketed on any of the dates described above in paragraph 14.

16. On July 23, 1987, Lechmere placed a video camera on the roof of the Newington store near the northeast corner of the roof. The camera is capable of being rotated and the camera angle can be raised or lowered so that the camera can be directed at any point in the main parking lot or the small lot to the east of the Lechmere store. The camera can be monitored by security guards within the store, and Lechmere's has the necessary equipment to record on videotape from the camera.

S/THOMAS W. MEIKLEJOHN

THOMAS W. MEIKLEJOHN
Counsel for the General Counsel

S/J. WILLIAM GAGNE, JR.

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J. WILLIAM GAGNE, JR., ESQ.

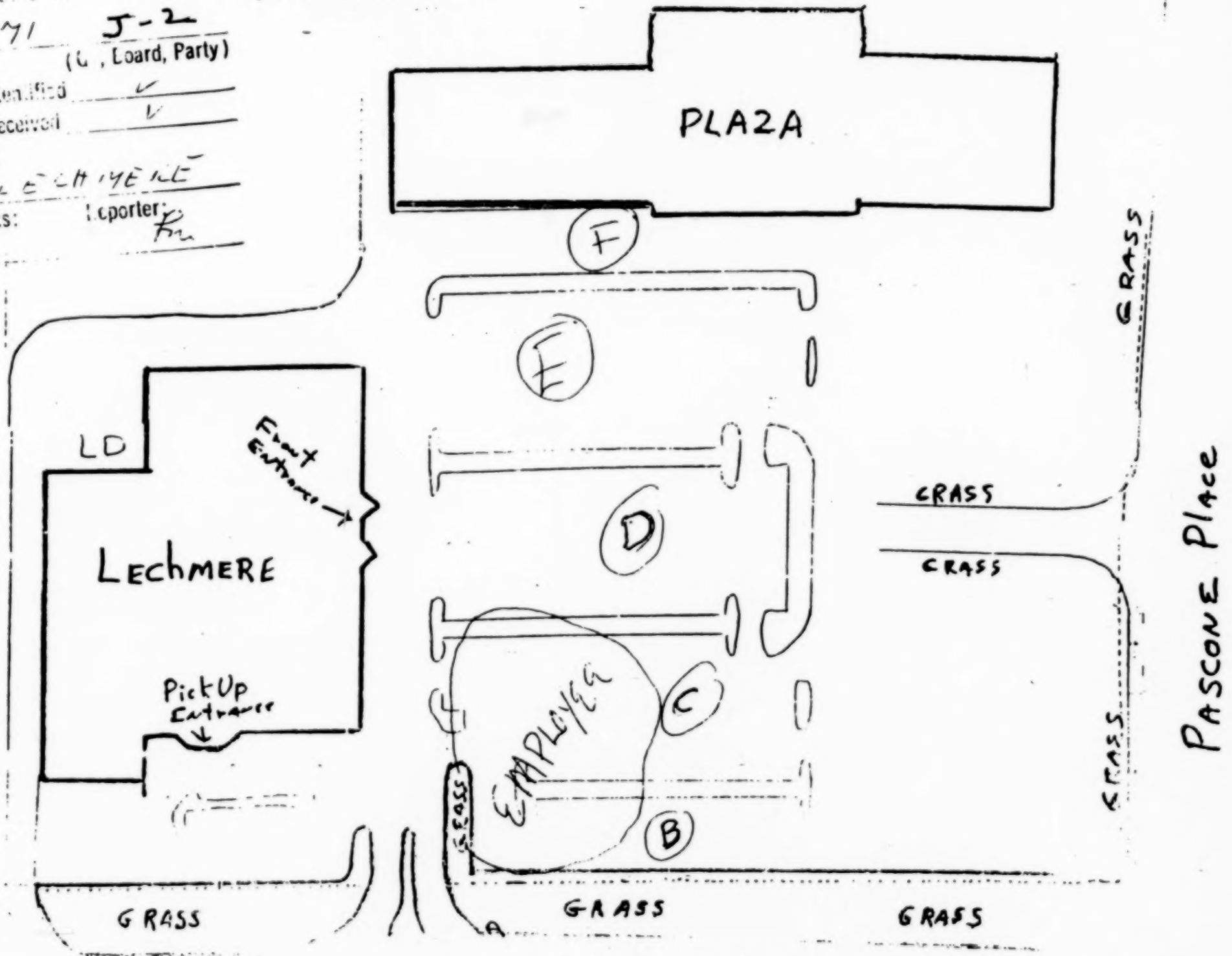
S/ROBERT P. JOY

ROBERT JOY, ESQUIRE
COUNSEL FOR LECHMERE, INC.

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SEE FOLDOUT NO 1



Berlin Turnpike

JOINT EXHIBIT NO. 3

LECHMERE: POLICY & PROCEDURE ISSUE

To: Distribution

Issue Date:

From: Policy & Procedure Department

Effective Date: Draft

Attached is new/revised Standard Operating Policy and Procedure number 03-03-22

Please include in the appropriate manual volume. Remove and destroy previously issued Policy and Procedure Number(s) 03-03-22 dtd 7/82 as well as Bulletin Number(s) None

Attached is revised S.O.P. 03-03-22, *No Solicitation Policy.*

The only content change in this policy was the word "employee" was changed to "associate". It was also put into the new S.O.P. format.

Please review this policy with all associates.

Remove the policy dated 7/82 and replace it with the attached.

Tom Boyden, Director Personnel Relations, LGO-275, x522

Resource person and extension to call with questions regarding policy & procedure content.

STANDARD OPERATING POLICY & PROCEDURE

SUBJECT: NO SOLICITATION POLICY SOP NO. 03-03-22
 CHAPTER: EMPLOYEE RELATIONS PAGE: 1 of 1
 SECTION: PERSONNEL DISTRIBUTION: GENERAL
 EFFECTIVE: 2/86 SUPERSEDES: NEXT REVIEW DATE: 2/87
 EXECUTIVE SPONSOR: Director Personnel Relations

I. POLICY

Solicitation of associates in the work areas during working time is strictly prohibited. It is strictly prohibited in all selling and public areas at all times. Non-working time includes break periods, meal periods and other specified periods during the work day when associates are properly not engaged in performing their work tasks. Distribution of literature in work areas and public selling areas is prohibited.

Non-associates are prohibited from soliciting and distributing literature at all times anywhere on Company property, including parking lots. Non-associates have no right of access to the non-working areas and only to the public and selling areas of the store in connection with its public use.

Violations of this policy must be reported immediately to a Manager or other appropriate executive. Violations will be handled in accordance with S.O.P. 03-03-35, *Violations of No Solicitation Policy*. Disciplinary action may be imposed in accordance with S.O.P. 03-03-08, *Discipline*.

II. OPERATIONS/FUNCTIONS AFFECTED

All Lechmere Associates and Operations

III. PROCEDURE/RESPONSIBILITIES

None

IV. EXHIBITS/FORMS USED

None

V. RELATED INFORMATION

S.O.P. 03-03-35, *Handling Violations to No Solicitation Policy*

S.O.P. 03-03-08, *Discipline*

APPROVED: s/ C. GEORGE SCALA
 C. George Scala,
 Chairman/CEO and President

DATE: 3/12/86

APPROVED: s/ PAUL H. CHADDOCK
 Paul H. Chaddock,
 Sr. V.P. Personnel

DATE: 3/11/86

GENERAL COUNSEL'S EXHIBIT NO. 1

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

Case 39-CA-3571

Date Filed July 21, 1987

INSTRUCTIONS: File an original and 4 copies of this charge with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer

Lechmere, Inc.

b. Number of workers employed

c. Address (street, city, state, ZIP code)

1305 Berlin Turnpike, Newington, CT.

d. Employer Representative

e. Telephone No.

666-4550

f. Type of Establishment (factory, mine, wholesaler, etc.)

Retail

g. Identify principal product or service

Sales

h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) _____ of the National Labor Relations Act, and these unfair labor practices are unfair practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (be specific as to facts, names, addresses, plants involved, dates, places, etc.)

Since on or about July 17, 1987, the above-named Employer through its officers, agents and employees has threatened, coerced and intimidated employees in violation of Section 8(a)(1) of the Act.

By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.

3. Full name of party filing (if labor organization, give full name, including local name and number)

Local 919, U.F.C.W., AFL-CIO

4a. Address (street and number, city, state, and ZIP code)

264 Farmington Avenue, Htfd, CT. 06105

4b. Telephone No.

525-9333

5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)

Local 919, United Food & Commercial Workers, AFL-CIO

6. DECLARATION

I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By s/ J. WILLIAM GAGNE
207 Washington Street
Hartford, CT. 06106

Attorney

(203) 522-5049
July 21, 1987

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SUBREGION 39

[CAPTION OMITTED]

COMPLAINT AND NOTICE OF HEARING

It having been charged by Local 919, United Food and Commercial Workers, AFL-CIO, herein called the Union, that Lechmere, Inc., herein called Respondent, has engaged in and is engaging in unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 29 U.S.C. Sec. 151, *et seq.*, herein called the Act, the General Counsel of the National Labor Relations Board, on behalf of the National Labor Relations Board, herein called the Board, by the undersigned, pursuant to Section 10(b) of the Act, and Section 102.15 of the Board's Rules and Regulations, Series 8, as amended, hereby issues this Complaint and Notice of Hearing and alleges as follows:

1. The charge in this proceeding was filed by the Union on July 21, 1987, and a copy thereof was served by certified mail on Respondent on July 22, 1987.

2. At all times material herein, Respondent, a Massachusetts corporation with an office and place of business in Newington, Connecticut, herein called its Newington facility, has been engaged in the retail sale of consumer goods.

3. During the 12-month period ending August 31, 1987, Respondent, in the course and conduct of its business operations described above in paragraph 2, derived gross revenues in excess of \$500,000.

4. During the 12-month period ending August 31, 1987, Respondent, in the course and conduct of its business oper-

ations described above in paragraph 2, purchased and received at its Newington facility products, goods, and materials valued in excess of \$50,000 directly from points outside the State of Connecticut.

5. Respondent is now, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

6. The Union is now, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

7. At all times material herein, Roger Samualson occupied the position of Respondent's Newington Store Manager and is now, and has been at all times material herein, a supervisor of Respondent within the meaning of Section 2(11) of the Act and an agent of Respondent within the meaning of Section 2(13) of the Act.

8. Since on or about June 14, 1987, Respondent has refused to permit representatives of the Union to engage in organizational picketing and handbilling in the parking area at its Newington facility.

9. On or about June 20, 1987, Respondent, acting through Roger Samualson, caused representatives of the Union to be removed from public property adjacent to the parking area at its Newington facility where they were attempting to distribute organizational handbills to occupants of vehicles.

10. Since on or about July 15, 1987, Respondent, by placing a revolving video camera on the roof of its Newington facility, has engaged in surveillance of its employees' union activities.

11. By the acts and conduct described above in paragraphs 8, 9 and 10, and by each of said acts, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed in Section 7 of the Act, and Respondent thereby has been engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

12. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

WHEREFORE, as part of the remedy for the unfair labor practices alleged above, the General Counsel seeks an order providing that Respondent:

Notify the Officer-in-Charge for Subregion 39, in writing, within 20 days from the date of this Order, what steps have been taken to comply therewith. For the purpose of determining or securing compliance with this order, the Board, or any of its duly authorized representatives, may obtain discovery from the Respondents, its officers, agents, successors or assigns, or any other person having knowledge concerning any compliance matter, in the manner provided by the Federal Rules of Civil Procedure. Such discovery shall be conducted under the supervision of the United States Court of Appeals enforcing this Order and may be had upon any matter reasonably related to compliance with this Order, as enforced by the Court.

The General Counsel further prays for such other relief as may be just and proper to remedy the unfair labor practices herein alleged.

PLEASE TAKE NOTICE that commencing at 11 o'clock in the forenoon, Eastern Daylight Saving Time, on the 16th of May, 1988, and on consecutive days thereafter, a hearing will be conducted at One Commercial Plaza, 21st Floor, Hartford, Connecticut, before a duly designated administrative law judge of the National Labor Relations Board on the allegations set forth in the above complaint, at which time and place you will have the right to appear in person, or otherwise, and give testimony.

You are further notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, Series 8, as amended, Respondent shall file with the undersigned, acting in this matter as an agent of the National Labor Relations Board, an original and six (6) copies of an answer to said complaint with 14 days from the issuance thereof, and that, unless it does so, all of the allegations in the complaint shall be deemed to be admitted to be true and shall be so found by the Board. You are also notified that pursuant to said Rules and Regulations, Respondent shall serve a copy of the answer on each of the other parties.

Form NLRB-4668, Statement of Standard Procedures in Formal Hearings Held Before the National Labor Relations Board in Unfair Labor Practice Cases, is attached.

Dated at Hartford, Connecticut, this 18th day of November, 1987.

s/ PETER B. HOFFMAN

Peter B. Hoffman,

Officer-in-Charge

National Labor Relations Board

Subregion 39

Hartford, Connecticut

Attachments

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SUBREGION 39

[CAPTION OMITTED]

RESPONDENT'S ANSWER

Lechmere, Inc., hereinafter called Respondent, for its answer to the Complaint says that it:

1. Admits the allegations contained in paragraph 1 on the Complaint.
2. Admits the allegations contained in paragraph 2 of the Complaint.
3. Admits the allegations contained in paragraph 3 of the Complaint.
4. Admits the allegations contained in paragraph 4 of the Complaint.
5. Admits the allegations contained in paragraph 5 of the Complaint.
6. Admits the allegations contained in paragraph 6 of the Complaint.
7. Admits the allegations contained in paragraph 7 of the Complaint.
8. Admits the allegations contained in paragraph 8 of the Complaint.
9. Denies the allegations contained in paragraph 9 of the Complaint.
10. Denies the allegations contained in paragraph 10 of the Complaint.
11. Denies the allegations contained in paragraph 11 of the Complaint.
12. Denies the allegations contained in paragraph 12 of the Complaint.

WHEREFORE, Respondent denies that it committed the unfair labor practices alleged, opposes any remedy and prays that the Complaint be dismissed in its entirety.

Respectfully submitted,

LECHMERE, INC.

BY s/ ROBERT P. JOY
Robert P. Joy
MORGAN, BROWN & JOY
One Boston Place
Boston, MA 02108
(617) 523-6666

Dated: November 30, 1987

[CERTIFICATE OF SERVICE OMITTED]

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SEE FOLDOUT NO 2-3

GENERAL COUNSEL'S EXHIBIT NO. 4

[LECHMERE — LETTERHEAD]

Dear Lechmere Associate:

I wish to continue our communications regarding the union's activities directed toward our Newington associates and to reiterate Lechmere's philosophy toward unions.

As we have mentioned previously, Lechmere is proud of its practice of maintaining an open and honest relationship with associates. We place great value on having the ability to communicate and deal directly with you — something that typically doesn't occur if there is a third party such as a union involved.

Because of our philosophies as a company, no Lechmere associates — and we now have 17 stores — have found it necessary to engage a union to represent them.

The union has several approaches to reach associates. I'd like to speak briefly about each of these:

Distribution of Literature

On several occasions, union representatives have distributed handouts in the store and in our parking lot. Inasmuch as Lechmere's policies do not permit solicitation or distribution by non-associates on company property, we have asked people engaged in this type of activity to leave. We feel we have an obligation to maintain an environment free of interruption and inconvenience for both our customers and our associates.

Newspaper Ads

You may have noticed the coupons that have appeared in the newspaper ads and literature. I'd like to make you aware of the significance of them. They are, in fact,

union authorization cards. Signing them means that you are authorizing the union to represent you — thereby inserting an outside party between you and Lechmere.

Federal law does allow for an employee of a company who has turned a signed card into the union to revoke this authorization. You may contact the union and instruct them to revoke your authorization. If you have any problems, you may telephone the National Labor Relations Board in Hartford at 240-3522.

Telephone Calls

Several associates have mentioned to us about telephone calls they have received at home by union representatives and have been disturbed by this intrusion. I am sorry that your home life has to be interrupted by such calls. I can only suggest that if you don't wish to be called at home that you let the caller know. If the calls persist, contact the telephone company to determine what steps could be taken through them.

I have heard from a number of associates who have had experience with this union. They report that Lechmere is a much better place to work than their previous unionized company.

We also think that Lechmere is a good place to work. We believe in fair and competitive wages and benefits. Our working conditions are among the best in retailing. We believe in honest and open two-way communications.

Oh, this doesn't mean that occasionally there may be problems or associate issues, for they occur in any workplace. But we feel that with our philosophies towards associates that we can listen to those concerns and work through them with you.

I thank you for taking the time to read this letter. If you have any questions at all, I encourage you to ask me directly or to see one of the managers or supervisors. If we don't know the answer, we'll find out for you. I would even encourage you to share this letter with your family and friends. I think you will find that they may have had experiences similar to those mentioned above.

Again, thank for your interest

Very truly yours,

s/ ROGER SAMUELSON

Roger Samuelson
General Manager

RS/mc

RESPONDENT'S EXHIBIT NO. 3

[KONOVER - LETTERHEAD]

June 26, 1987

Tom Boyden
 Lechmere
 10 Commerce Way
 Woburn, Massachusetts 01801

Dear Mr. Boyden:

This letter serves to confirm the telephone authorization you were given on June 22, 1987 which will allow Lechmere, until further notice, to represent the interests of Newington Commercial Associates Limited Partnership (owner of the satellite stores and part of the common areas of the Lechmere Shopping Center in Newington, Connecticut) with regard to using reasonable lawful means to prevent the distribution of hand bills, flyers, etc. within the shopping center. We, however, reserve the right to assume responsibility for this function at anytime in the future.

In the event that you need to reach our company, please contact our property manager, Patricia Russek, at the address or phone number above.

Very truly yours,

NEWINGTON COMMERCIAL ASSOCIATES
 LIMITED PARTNERSHIP

By: Konover Management Corporation,
 Its General Partner

By: s/ EDWARD M. YOUNGER
 Edward M. Younger
 Its President

EMY/lly

cc: Christopher M. Raphael

UNITED STATES OF AMERICA
 BEFORE THE NATIONAL LABOR RELATIONS BOARD
 [CAPTION OMITTED]

RESPONDENT'S EXCEPTIONS TO THE DECISION OF
 THE ADMINISTRATIVE LAW JUDGE

Pursuant to Section 102.46 of the Rules and Regulations of the National Labor Relations Board, Series 8, as amended, Lechmere, Inc. ("Lechmere" or "Respondent") files its exceptions to the Decision and Order of Administrative Law Judge Joel P. Biblowitz dated September 30, 1988. Lechmere also submits herewith its Brief in Support of Exceptions, containing the complete grounds for its Exceptions.

Lechmere respectfully contends that Administrative Law Judge Biblowitz erred by the following acts:

I. EXCEPTION TO FACTS FOUND BY THE ADMINISTRATIVE LAW JUDGE.

A. *Background*¹

1. Failing to find that there are no sidewalks along the Berlin Turnpike for pedestrian travel. (Dec., p. 2, lines 5-30; T. 23)

2. Finding that the main entrance roadway in front of the Lechmere store "ends at" the satellite stores, and finding that the delivery entrance roadway "connects to a loading dock at the rear" of Lechmere. (Dec., p. 2, lines 33-46) Failing to find that the main entrance roadway in front of Lechmere intersects with a roadway running in front of the satellite stores that is also a continuation of the delivery entrance roadway running behind Lechmere. Thus, vehicular traffic flows

¹ For convenience Lechmere will generally employ Judge Biblowitz's organization and more particularly his choice of headings to state its exception to his decision.

between the Lechmere store and the satellite stores. (T. 141-142; *and see* Jt. Ex. 2)

3. Failing to find that a low barrier of decorative trees and shrubbery separates the satellite stores from the parking area and the Lechmere store. (T. 178; *and see* Jt. Ex. 2)

4. Failing to find that there are no benches, chairs or other such inducements for customers to linger in front of the Lechmere store. (T. 171)

5. Failing to find that the two public telephones located in front of the satellite stores are at least 500 feet away from the Berlin Turnpike across the entire Lechmere Plaza parking area; that they are not visible from the Berlin Turnpike until drivers are directly in front of Lechmere Plaza; and that other pay phones are more accessible at several nearby locations. (Dec., p. 2, lines 18-19; T. 172-174; *and see* Jt. Ex. 2)

6. Failing to find an absence of any evidence that any members of the general public or any passers-by ever made use of the pay phones in front of the satellite stores. (*See* T. 95-96, 172-174)

7. Failing to find that there was minimal interchange of customers between Lechmere and the satellite stores in the summer of 1987. (T. 171; *and see* G.C. Brief, at 18, "While there is no evidence of significant pedestrian traffic between Lechmere's and the satellite stores . . .")

8. Failing to find that the satellite stores are specialized, such as a card shop and a Radio Shack. (T. 171-173)

9. Failing to find as a matter of fact that Lechmere Plaza contains no restaurants, bars, ice cream shops, convenience stores, or any other establishments that draw generalized or "impluse" clientele. (T. 171-172; *but see* Dec. at p. 9, lines 36-37, "Analysis")

10. Failing to find that there are no signs or barriers denoting an employee parking area or an employee entrance to the store. (Dec. p. 3, lines 2-4; T. 21-22, *and see* 143)

11. Failing to find that the parking lot lights are automatically shut off one-half hour after closing each night. (T. 175)

B. Events of June 18

12. Failing to find that Union organizers placed leaflets on cars parked in the informal employee parking area three different times on June 18, at approximately 10:00 A.M., 5:00 P.M., and another time in between (and thus, largely or entirely during store business hours). (Dec., p. 3, lines 43-46; p. 4, lines 2-4; T. 28-30, 37-38)

13. Failing to find that the Union organizers' first effort on June 18 involved entering the Lechmere store itself. (T. 187)

14. Failing to find that, when asked to leave Lechmere's property on June 18 and other days, the Union organizers did not do so immediately, although they did comply. (T. 32)

C. Events of June 20

15. Failing to find that the first Union efforts on June 20 involved two representatives driving into the parking lot, parking, and then placing literature on parked cars. (Dec. p. 4, lines 14-18, lines 36-40; p. 5, lines 12-15, lines 30-34; *but see* lines 48-50, continuing on p. 6, line 1; *and see* T. 188-189, 199-205, 230-232, 239)

16. Failing to find that Samuelson immediately wrote a summary of this incident in an "Incident Report" (T. 199-205, 239)

17. Failing to find that, after the Union representatives convened as a group, at about 9:47 A.M. they walked to Lechmere and entered the parking lot "dog leg" area up to 100 feet from the Berlin Turnpike on Lechmere's property, attempting to hand literature to entering cars. (Dec., p. 4, lines 14-21, lines 38-40; p. 5 lines 14-16, lines 33-35; *but see* p. 6, lines 1-6; *and see* T. 189-191, and Jt. Ex. 2)

18. Finding the the four Union representatives all stood within about four feet of the Berlin Turnpike at all times during the incident in question, in the face of evidence (much undisputed) that they showed no such restraint on numerous other occasions before and after, even minutes earlier and later again the same day. (Dec., p. 4, lines 18-20, 38-40; p. 5, lines 15-16, lines 33-34; *but see* p. 6, lines 1-5; and T. 28-30, 32-35, 37-38, 57, 61-62, 176-177, 187, 188-189, 199-205, 230-231)

19. Failing to find that as Samuelson first approached the group of Union representatives they were not within a few feet of the Berlin Turnpike on public property, but were instead on Lechmere property moving back down the "dog leg" toward the Berlin Turnpike. (T. 234-235)

20. Failing to find that the Union representatives engaged Samuelson in a debate about Lechmere's property line that was largely focused on their right to be on the grassy "dog leg." (See T. 190-191, 236-237)

21. Finding that Samuelson told the police that the Union representatives were trespassing on his property and he wanted them to leave; failing to find that Samuelson said, "These people are trespassing on Lechmere property, and I would like them to leave our property." (Dec., p. 6, lines 11-12; T. 192)

22. Failing to find that Samuelson immediately accepted the police officer's instructions and left the scene, and that for months thereafter the Union representatives met no interference when they remained on public property near the Berlin Turnpike. (Dec., p. 6, lines 20-23; *but see* Dec., p. 8, lines 11-13; *see also* Stipulation of Facts, paras. 14 and 15; T. 50, 65-66, 110, 122, 130, 134, 192-193)

23. Failing to find that Samuelson's efforts on the morning of June 20, 1988 had no effect on the Union's representatives initially, nor did it influence their eventual decision to leave, and that they finally left of their own accord and for no

other reason. (Dec., p. 4, lines 33-34; p. 5, lines 7-10, lines 28-30, 43-46; p. 6, line 20; *and see* T. 41, 50, 65-66, 105-106, 107-108, 110, 116-118, 121-122, 127-130, 134)

24. Failing to find that there was no evidence that any employee saw, heard, or was in any way affected by the incident on the morning of June 20. (Dec., pp. 3-6 generally)

25. Failing to find that, in defiance of police instructions, Lisa Meucci and perhaps other Union representatives returned later on June 20 and again handbilled in the parking lot and in the store. (T. 61-62)

26. Failing to find that Union witness Lisa Meucci gave false sworn testimony in her investigatory affidavit to the Board (later toned down in her sworn oral testimony), to the effect that Officer Gallagher ordered the Union representatives to leave the scene. (T. 50-51)

27. Crediting the testimony of Union witness Gagnon that Samuelson claimed that Lechmere owned the entire "grassy strip," to the edge of the Berlin Turnpike. (Dec., p. 5, lines 36-38, *and see* p. 10, lines 10-11, "Analysis.")

D. Other Union Attempts To Contact Employees.

28. In any respect giving weight to the hearsay testimony by Union witness Meucci concerning telephone conversations with Lechmere employees in which "parents would intervene." (Dec., p. 6, lines 40-41)

29. Failing to find that at least one Lechmere employee provided the Union with names and addresses of co-workers. (Dec., p. 7, lines 1-5; T. 76-77)

30. Failing to find that the Union created a computerized mailing list of Lechmere employees at Newington. (Dec., p. 7, lines 1-5; T. 76-77)

31. Failing to find that, in addition to all other sources of information, Lechmere itself notified its employees about the Union's organization effort by a letter dated July 1. (Dec., p. 6, lines 34-41; p. 7, lines 1-9; *and see* G.C. Ex. 4)

32. Failing to find that Lechmere employees complained about the Union's newspaper advertisements, mailings, and home visits. (Dec., p. 7, lines 1-5; T. 183-184)

33. Failing to find that on some days the Union left leaflets across the entire parking lot, beyond Lechmere's property. (See Dec., pp. 3-7 generally; T. 28-29, 176-177)

34. Failing to find that customers complained to Lechmere about Union leaflets left on their cars. (See Dec., pp. 3-7 generally; T. 221)

E. *Prior Enforcement Of No-Solicitation.*

35. Finding that the store opened in November 1966 (which is undoubtedly just a typographical error). (Dec., p. 7, line 15; see Stipulation of Facts, para. 3)

36. Failing to find that Lechmere employees, including Samuelson, are all informed about the no solicitation policy during orientation immediately after they are hired. (Dec., p. 7, lines 13-42; see T. 165-169, 207-213)

37. Failing to find that, in addition to specific incidents described in the decision, Samuelson has rejected numerous other telephone requests to solicit on Lechmere's property for raffles, bake sales, and the like. (Dec., p. 7, lines 13-28; see T. 161-162)

38. Failing to find that Lechmere's uniform, prophylactic enforcement of its no solicitation policy permitted no inference that Union animus motivated Lechmere in the incidents underlying the Complaint. (Dec., p. 7, lines 13-28; see T. 145-153, 161-162, 169-170, 210-213, 219-220)

II. EXCEPTIONS TO THE ANALYSIS OF THE ADMINISTRATIVE LAW JUDGE.

39. Finding that on June 18, between 9:30 and 10:00 A.M., the Union representatives' first effort was to place handbills on parked cars. (Dec., p. 8, lines 30-36; see Exception No. 13 above)

40. Failing to find that the *Fairmont Hotel* formula should be modified to conform more precisely to *N.L.R.B. v. Babcock & Wilcox* and other Supreme Court precedent. (Dec., pp. 8-10 generally)

41. Failing to find that *N.L.R.B. v. Babcock & Wilcox* is the highest controlling precedent and dictates dismissal of the allegation that Lechmere unlawfully barred the Union from the parking lot. (Dec., pp. 8-10 generally)

42. Finding that the Union's Section 7 rights were more compelling than Lechmere's property rights. (Dec., p. 9, lines 4-5)

43. Finding that the Union's activity involved little likelihood of affecting customers because the Union placed handbills on cars "only" in the informal employee parking area, and generally did so before 10:00 A.M. (Dec., p. 9, lines 10-14) Failing to find that Union representatives repeatedly entered the store during business hours, and on other occasions left handbills across the entire parking lot, and further, that often during business hours the Union representatives had no method to determine which cars belonged to employees in an area in which customers also routinely parked. (See T. 28-30, 32-35, 37-38, 57, 62, 176-177, 187, 188-189, 199-205, 230-231; and see Exceptions Nos. 13, 14, 18, 25, 33, 34, *supra*, and 49, 55 and 64, *infra*)

44. Finding that Lechmere had less-than-compelling property rights. (Dec., p. 9, lines 14-15)

45. Finding any significance to the fact that Lechmere posted no signs at the entrance to the parking lot limiting entry in any way. (Dec., p. 9, lines 17-18)

46. Finding that Lechmere more resembled an open shopping mall than a single store, surrounded by its own parking lot. (Dec., p. 9, lines 30-40)

47. Finding that it is unnecessary to consider whether reasonable alternative means existed for the Union to communicate with Lechmere's employees. (Dec., p. 9, lines 42-44)

48. Finding that Union representatives were unable to converse with Lechmere employees arriving at work. (Dec., p. 9, lines 48-49)

49. Failing to find, in Judge Biblowitz' consideration of "reasonable alternative means," that the General Counsel (and not Lechmere) carried the burden of showing that methods other than trespassing did not exist, and that the General Counsel did not in this case meet that burden. (Dec., p. 9, lines 42-50; p. 10, lines 1-6; *and see* G.C. Brief, at 23-24)

50. Crediting the testimony of the four Union representatives *in toto* over that of Roger Samuelson concerning events on the morning of June 20, in the face of numerous undisputed facts indicting that the Union representatives presented a coordinated and contrived story. (Dec., p. 10, lines 8-11 *and see* Exceptions 15-27, above)

51. Finding that it was "reasonable" to believe that the Union representatives solicited only on public property on the morning of June 20 because they had been "rebuffed" before, in the face of ample evidence that, despite Lechmere's requests, they showed no such restraint on other occasions, even earlier and again later on the same day. (Dec., p. 10, lines 11-13; *see* Exception 18 above)

52. Failing to find that, although Samuelson did tell Union representatives to leave "Lechmere property" while they were standing on public property, they had only seconds before been well on to Lechmere property. (Dec., p. 10, lines 23-25 *and see* Exception 18-20, above)

53. Finding that Samuelson violated Section 8(a)(1) by attempting to cause the Union agents to be removed from public property on June 20. (Dec., p. 10, lines 28-30)

54. Failing to find that Samuelson's actions on June 20 did not rise to the level of a violation of Section 8(a)(1) because the violation, if any, was *de minimus*. (Dec., p. 10, lines 28-30, *and see* Exceptions 15-27, above)

55. Failing to find that Samuelson's actions on June 20 did not rise to the level of violation of Section 8(a)(1) because the violation, if any, was immediately, effectively, and permanently "cured." (Dec., p. 10, lines 28-30; *and see* Exceptions 15-27, above)

56. Finding that "peaceful union activity cannot be a motivating factor in an employer's institution of a videotaping system;" failing to find that trespassory union activity, even if "peaceful," can be a lawful motivating factor for photographic surveillance. (Dec., p. 10, lines 39-40; *see* *Benton Kirshner, Inc.*, 209 N.L.R.B. 1081 (1974), *enf.* 523 F.2d 1046, 90 LRRM 2958 (9th Cir. 1975))

57. Finding that "there is certainly no evidence that [Union representatives] harassed customers [on June 18] or at any time prior to July 23," in the face of undisputed evidence that Union representatives repeatedly entered the store during business hours, including incursions into public restrooms, and that they left handbills on cars not belonging to employees; and further, in the face of Judge Biblowitz' rulings to exclude certain evidence (discussed below). (Dec., p. 11, lines 4-5; *and see* T. 52-58, 62, 124-125, 134-135, 186-188, 193-194)

III. EXCEPTIONS TO THE CONCLUSIONS OF LAW BY THE ADMINISTRATIVE LAW JUDGE

58. Finding that Lechmere violated Section 8(a)(1) of the Act by refusing to allow the Union representatives to engage in organizing and handbilling in the store's parking lot and by attempting to cause the Union representatives to be removed from a public area adjacent to the parking lot. (Dec., p. 11, lines 20-23)

IV. EXCEPTIONS TO THE REMEDY PROPOSED BY THE ADMINISTRATIVE LAW JUDGE.

59. Requiring Lechmere to cease and desist from refusing to allow Union representatives to engage in organizing and

handbilling in the store's parking lot. (Dec., p. 11, lines 29-30)

60. Requiring Lechmere to take certain affirmative action designed to effectuate the policies of the Act. (Dec., p. 11, lines 30-31)

V. EXCEPTIONS TO THE ORDER RECOMMENDED BY THE ADMINISTRATIVE LAW JUDGE.

61. Requiring Lechmere to cease and desist from prohibiting union representatives from distributing union literature to its employees in the parking lot adjacent to its store in Newington, Connecticut. (Dec., p. 11, lines 39-43, p. 12, lines 1-3)

62. Requiring Lechmere to cease and desist from threatening union representatives with arrest for distributing union literature to its employees in the parking lot adjacent to its store in Newington, Connecticut. (Dec., p. 11, lines 39-43, p. 12, lines 2-3)

63. Requiring Lechmere to cease and desist from interfering with, restraining or coercing employees in the exercise of rights guaranteed in Section 7 of the Act (because Lechmere has not done so). (Dec., p. 12, lines 7-8)

64. Requiring Lechmere to take the affirmative action described in the Administrative Law Judge's decision. (Dec., p. 12, lines 10-23)

65. Lechmere excepts to the Notice proposed by the Administrative Law Judge in its entirety, consistent with the exceptions set forth herein.

VI. EXCEPTIONS TO EVIDENTIARY RULINGS BY THE ADMINISTRATIVE LAW JUDGE.

66. Lechmere excepts to Judge Biblowitz' refusal to accept evidence concerning the Union representatives on and after June 18 repeatedly entering the store, and among other things, confronting employees, distributing literature, stuffing

literature into merchandise, entering warehouse areas not open to the public, leaving literature in public restrooms, and causing disturbances by refusing to leave when asked. (See T. 52-58, 62, 124-125, 134-135, 186-188, 193-194) Lechmere contends that this evidence has an important bearing on each major allegation in the Complaint: denial of access to the parking lot, the events of June 20, and the placement and use of the video camera.

67. Lechmere excepts to Judge Biblowitz' refusal to accept evidence concerning the simplicity of the procedure in Connecticut for obtaining from a license plate number the name and address of the registered owner of an automobile. (See T. 182-183) Lechmere contends that this evidence is directly relevant to the issue of "reasonable alternative means of communication."

68. Lechmere excepts to Judge Biblowitz' refusal to accept evidence concerning the nature and frequency of the Union's activity at the Newington store on and after August 7, and the evidence that this activity was informational picketing aimed at the general public rather than organizing activity. (See T. 79-81, 135-137, 194) Lechmere contends that this evidence is directly relevant to these issues: "reasonable alternative means of communication"; whether the June 20 incident involved no violation of the Act because it was *de minimis*, or was "cured"; and finally, the extent of the remedy, if any.

Respectfully submitted,
LECHMERE, INC., *Respondent*
By its Attorneys,
MORGAN, BROWN & JOY
One Boston Place
Boston, MA 02108
(617) 523-6666

Dated: October 27, 1988

By s/ ROBERT P. JOY
Robert P. Joy
By s/ KEITH H. McCOWN
Keith H. McCOWN

[CERTIFICATES OF SERVICE OMITTED]

SUPREME COURT OF THE UNITED STATES

OFFICE OF THE CLERK
WASHINGTON, D.C. 20543

March 18, 1991

Mr. Robert P. Joy
Morgan, Brown & Joy
One Boston Place
Boston, MA 02108

Re: Lechmere, Inc. v.
National Labor Relations Board
No. 90-970

Dear Mr. Joy:

The Court today entered the following order in the above
entitled case:

The petition for a writ of certiorari is granted.

Very truly yours,

s/ WILLIAM K. SUTER
William K. Suter, *Clerk*

LECHMERE

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**WHY
PAY UNION
DUES ???**

**WISE WORKERS
SAY:**

**"We Pay Union Dues"
BECAUSE ...**

**IT DOESN'T COST: IT PAYS
To Belong To
Local 919**



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belonging is expensive.



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- ACCIDENTAL DEATH & DISMEMBERMENT
- PHYSICIANS EXPENSE BENEFITS
- SUPPLEMENTARY ACCIDENT BENEFITS
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- PAID HOLIDAYS, PAID SICK LEAVE,
- Rest Periods with Pay
- Leave of Absence
- Wages
- Ambulance Service
- Wearing Apparel and Tools
- Holidays
 - New Year's Day
 - Washington's Birthday
 - Memorial Day
 - Independence Day
 - Labor Day
 - Thanksgiving Day
 - Christmas Day
 - Birthday Holiday
 - Personal Holidays
 - Anniversary Date of Employment
- Sick Leave with Pay
- Severance Pay
- Anesthesia
- No Discrimination
- Safety
- Work Schedules
- Death in Family
- Injuries
- Jury Duty
- Inspection of Payroll Records
- Time Clocks
- Bulletin Boards
- Privileges
- Registers
- Military Duty
- No Individual Agreements
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- Vacations
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Desiring to enjoy the rights and benefits of collective bargaining I the undersigned employee of _____

at _____ hereby authorize United Food & Commercial Workers International Union, AFL, CIO or its chartered Local Union to represent me for purposes of collective bargaining respecting rates of pay, wages, hours of employment, or other conditions of employment, in accordance with applicable law.

NO INITIATION FEE - NO DUES UNTIL A CONTRACT IS SIGNED

DATE _____ SIGNATURE OF EMPLOYEE _____

Please PRINT Your Social Security Number _____

Your Name _____ Your Address _____

City _____ State _____ Zip Code _____ Home Phone Number _____

Your Department Name _____ Your Shift: DAY ☐ NIGHT ☐ Your Job Title _____ Dept. No. _____

Date Hired _____ Your Present Rate of Pay _____ (per hr.) Hours Worked Per Week _____

Your Days Off: MON ☐ TUE ☐ WED ☐ THUR ☐ FRI ☐ SAT ☐ SUN ☐



A.F.L. C.I.O.

ARNALDO F. ESPINOSA
President

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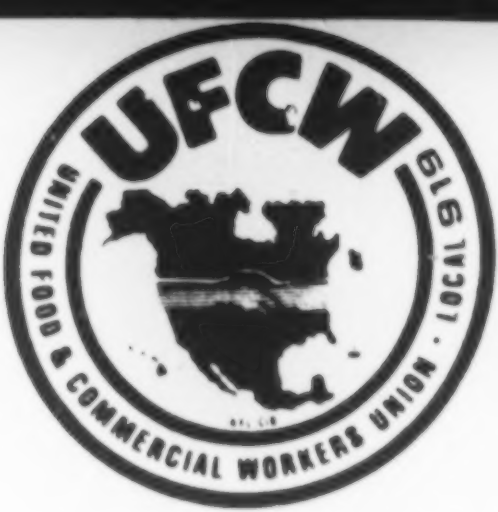
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ARNALDO F. ESPINOSA
President

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Secretary-Treasurer



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Leave of Absence Ambulance Service
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- Christmas Day
- Birthday Holiday
- Personal Holidays
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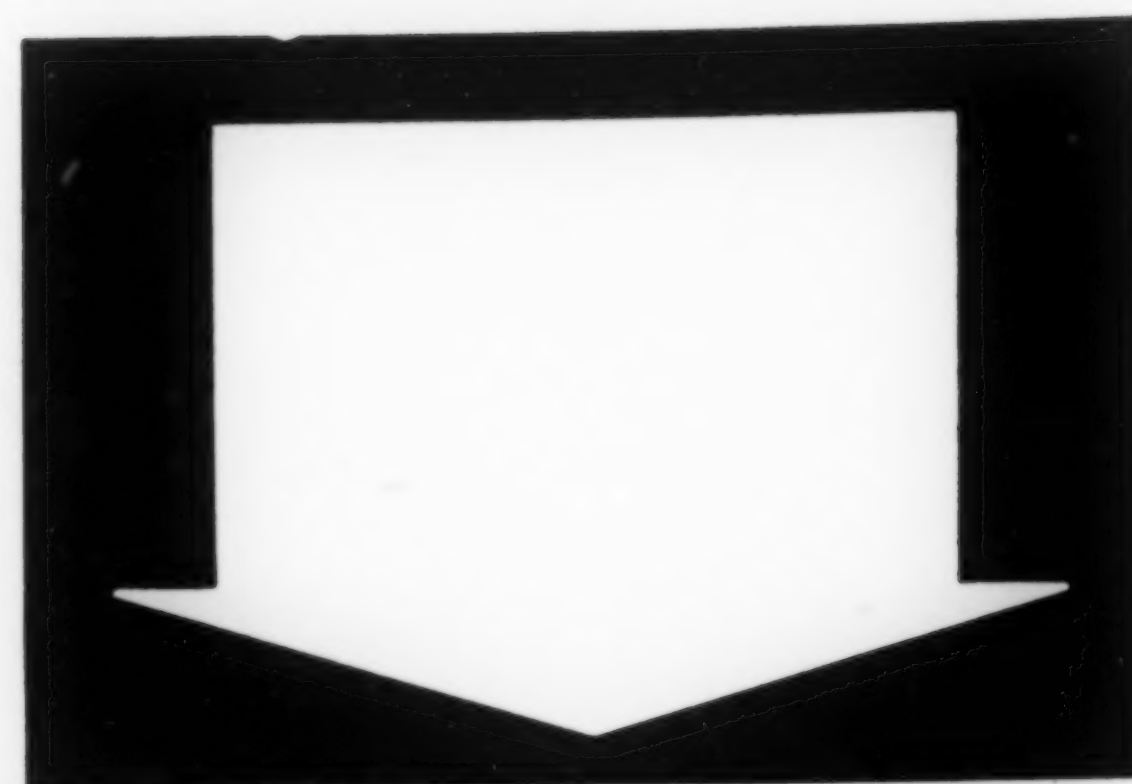
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Thanks

FOR YOUR HELP



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C. I. O.

AUTHORIZATION FOR REPRESENTATION

Desiring to enjoy the rights and benefits of collective bargaining, I the undersigned employee of
at hereby authorize United Food & Commercial Workers International Union, AFL-
CIO-CLC, or its chartered Local Union to represent me for purposes of collective bargaining, respecting rates of pay, wages, hours
of employment, or other conditions of employment, in accordance with applicable law.

NO INITIATION FEE – NO DUES UNTIL A CONTRACT IS SIGNED

DATE

SIGNATURE OF EMPLOYEE

Please PRINT:

Your Social Security Number

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Your Name Your Address

City State Zip Code Home Phone Number

Your Department Name Your shift: DAY ☐ NIGHT ☐ Your Job Title Dept. No.

Date Hired Your Present Rate of Pay (per hr.) Hours Worked Per Week

Your Days Off: MON. ☐ TUE. ☐ WED. ☐ THUR. ☐ FRI. ☐ SAT. ☐ SUN. ☐

C-126

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